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BUDAPEST, HUNGARY

ANTI-ASYLUM POLICIES OF HUNGARY

Zoltán Aszalós

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Open University for the degree of Master of Philosophy.

June 2002

Central European University

Legal Department - Human Rights Stream

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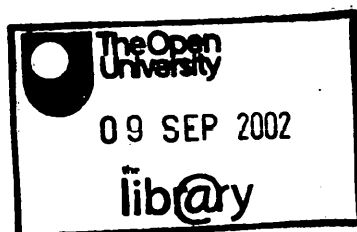
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ABSTRACT

The thesis focuses on the principal dilemma of the institution of asylum of Hungary in the post-Communist, pre-European Union era. The broader context is provided by analyses of international migration waves that reach Hungary, a presentation of the country's international human rights obligations and a discussion of the anti-migration influence of accession to the European Union. Finally, proposals are outlined for a closer adherence to international human rights principles and for the elaboration of national asylum policy.



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FOREWORD

The idea of writing a thesis about the institution of asylum in Hungary originated from the issues encountered in my working position at *Mahatma Gandhi Human Rights Organisation*¹, a Budapest based refugee-assisting NGO. Between 1996 and 1999 serving as a Project Co-ordinator and later as the Director² of this organisation, I planned projects for approximately 400 asylum seekers and recognised refugees per year. These projects included such activities as running a refugee camp and a language school, launching tolerance campaigns, providing administrative and legal advice, and managing the organisation's participation in national and international NGO networks.

The puzzling diversity of my clients' reasons for flight, such as persecution for political conviction, belonging to a minority group, not consenting to a forced marriage, or even for being an albino in a black environment³, drew my attention to the push factors behind the arrival of asylum-seekers and refugees to Hungary. As my work progressed, through co-operation with authorities, local governments, and other NGOs, my interest in the global refugee phenomena increased. The interpretation and implementation of the legal regulations in respect of specific cases, and the organisational and legal characteristics of

¹ The *Mahatma Gandhi Human Rights Organisation* was founded in 1992 with the specific objective to protect and support non-Europeans living in Hungary. This organisation used to be the Hungarian lead agency of CEFRAN, the Central European Forum of Refugee-Assisting NGOs - founded by ECRE, the European Council on Refugees and Exiles. The lead agency role included the setting up of a network of Hungarian NGOs working for refugees and broadening relationships with other lead agencies of other CEFRAN member countries, and with the ECRE headquarters in London.

² Part-time function performed in addition to full-time student position at the Central European University.

³ Kovrig, 1998, p. 5. (An article about an African albino and the Mahatma Gandhi Organisation)

the Hungarian asylum system also contributed to my growing fascination with this topic. While studying human rights at Central European University, my personal dedication became resolute to understand these factors in more detail and also to identify how the measures applied by Hungary meet the requirements of the international human rights agreements Hungary has become party to.

This thesis, through the perspective of ratified international legal instruments, focuses on the Hungarian institution of asylum and its wider context, which includes an analysis of the requirements set by the accession to the European Union. In this sense, this research resembles the discovery of the rules behind the movement of the loosely connected last wagon of a train on a bumpy and unexpectedly zigzagging track line. However, this thesis is more than a realistic snapshot in a scene of a long story with sudden changes. It provides an insight to trends that have shaped and will continue to shape the life of asylum seekers in Hungary. I also have to recognise the influence of my economist background on the character of the thesis, which leads to the strong presence of a managerial, practical perspective instead of an analytical stand of a lawyer.

I hope that the present thesis proves to be a source of scientifically elaborated information for those working with refugees in the field, and also for those who research these topics. Recognising the constantly increasing importance of the migration phenomena in Hungary, this thesis intends to contribute to the scientific discussion of this topic, as well as to the elaboration of a national policy for an efficient, but still humane treatment of those seeking asylum in Hungary.

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INTRODUCTION

Hungarian administrations have been tackling the asylum issue with a complex, and frequently contradictory set of regulations ever since the arrival of the first refugee waves at the end of the 1980's. Similar to other countries affected by international migration, Hungary also selected a variety of policies in order to protect refugees, and at the same time, measures to protect its territory against migrants.

As one of the first truly comprehensive measures, Law 1997:139 on Asylum was finally passed by the Hungarian Parliament in December 1997 and entered into force on 1 March 1998. The Law and the related government decrees⁴, by defining the refugee determination procedure, as well as by appointing the authorities responsible for their implementation, provided a relatively well-refined legal structure to asylum related issues in Hungary. This Law was a major step towards the fulfilment of Hungary's international obligations in the sphere of human rights. The new law put an end to the previous discriminatory legal distinction between the treatment of European and non-European refugees by cancelling the geographical reservation maintained on the 1951 United Nations Convention Relating to the Status of Refugees (hereinafter: Geneva Convention).

The situation of asylum issues in Hungary is obviously not static given the high speed of the modification of Hungary's geopolitical and economic conditions. Hungary, after gaining NATO membership, now seems to be on its way to join the European Union. One of the accession criteria during this period is the country's capability to manage refugee

⁴ Government Decree 1998:24 on the detailed regulations of the asylum procedure, and the identity documents of asylum seekers, temporary protected persons and persons authorised to stay. Government Decree 1998:25 on the provisions and support given to foreigners under Law 1997:139 on Asylum.

flows – a criteria which may even influence the speed and quality of accession. The constant refinement of the present legal instruments, and a search for a more balanced operation of administrative state and non-governmental bodies is effectuated in order to reach higher efficiency of operation and conformity with EU practices.

However, there are presently no unified pan-European standards for all aspects of migration and asylum policy despite the unanimous acceptance of the major international human rights instruments. The creation of a consensus on all these matters is at best a mid-term goal for EU countries. Therefore, Hungarian policy makers have a limited, and - as the accession process unfolds, - possibly a somewhat narrowing scope for deciding to choose a restrictive or a more liberal, welcoming interpretation of these international instruments. Governmental decisions focused on the EU accession are just one part of the picture. National and international human rights NGOs have emerged that also influence the structures that are imprinted in the texture of asylum provided to those who consciously or by chance arrive to Hungary.

Central Definitions

As the thesis focuses on asylum seekers, the situation of other migrants who do not apply for asylum are detailed to a degree sufficient to provide the necessary context. Anyone who arrives to the country with purposes other than tourism, business or studies will be called 'migrant', whether on a temporary or long-term basis, while those who ask for asylum are the 'asylum seekers'. For the purposes of the present thesis, only those who are accepted by the Hungarian authorities as refugees on the grounds of the Geneva Convention will be

identified as refugees. Those migrants whose applications for asylum are rejected will be referred to as 'rejected asylum seekers'.⁵

References are also made to 'potential Geneva Convention refugees', those who theoretically meet the requirements of the 1951 Geneva Convention, whether they have had the possibility or not to apply for asylum.

The objective and the structure of the thesis

On the basis of the above context, the present Thesis aims to provide scientific insight to the present situation of the institution of asylum in Hungary. This entails the evaluation of the characteristics of the effective protection that Hungary provides to refugees, in the light of the relevant international legal instruments. Chapter I. - *Refugees and Asylum seekers in Hungary* includes a brief description of the characteristics of international migration and its influence on Hungary. Then, Chapter II. - *The international legal obligations of Hungary* provides the international normative legal context that sets the principles for Hungarian law makers, and for the operation of the staff of administrative bodies and that of refugee assisting NGOs. Furthermore, in Chapter III. - *Accession to the European Union*, the main characteristics of the institution of asylum in the EU are presented to prepare the analyses of the influence of accession requirements on the observation of international human rights obligations in Hungary.

The details of the Hungarian institution of asylum will be discovered in Chapter IV. - *The Institution of Asylum in Hungary*, by analysing the major dilemma concerning the arrival, the stay and the return of asylum seekers in Hungary. Finally, in Chapter V. - *Proposals*,

⁵ These people may meet the requirements of the Geneva Convention, but are not given refugee status, or leave their countries for other reasons, such as civil war, ethnic conflicts, generalised violence, famine or serious social injustice, or simply for a desire for a better living.

the Thesis proposes principles and measures that policy makers of state and non-governmental bodies may take into consideration, in order to best support the rights of asylum seekers and refugees as set by the international human rights regulations.

I. REFUGEES AND ASYLUM SEEKERS IN HUNGARY

Political and/or economic turmoil in a country may easily result in the abrupt or continuous flight of tens of thousands of persons who feel compelled to seek protection elsewhere. The arrival of such people to Hungary is a message, and possibly one of the most reliable reports about events happening elsewhere in the world. The beginning of this chapter summarises the main characteristics and types of the 'conveyers' of these messages: the international community of refugees and asylum seekers, as well the overlaps and the relationships between the community of migrants, refugees and those of asylum seekers. This background prepares the second, main part of the chapter, which explores relevant information about refugees and asylum seekers in Hungary. This analysis puts into quantitative context Chapter IV. – *The institution of asylum in Hungary*, which discusses the situation of asylum seekers in Hungary, as well as the Chapter V. - *Proposals*, where the consideration of these pieces of information is essential.

I.A. Migration and Asylum in the World

Similarly to the territory of the Carpathian Basin, migration and the search for asylum have always been an integral part of human history in most areas of the world. The world's population has always been in a constant state of movement, whether driven by civil wars, economic poverty, unbearable social conditions⁶, famine, man-made or natural disasters of the environment, the clandestine or open violation of human rights, the desire to find a

⁶ Life expectancy rates provide a valuable insight into the enormous disparity in social conditions between different societies, and explain some of the underlying motives behind migration. Average life expectancy in Sierra Leone is 34 years, in Zambia it is 37 years of age. At the other end of the scale, France, Canada and Australia have life expectancy averages of 78 and Japan is even higher with 80 years being its average. These latter examples show how long life can be under better circumstances. Source: Stern, 1998.

better job, to join the family, or simply to travel. The reasons behind these migratory moves, as well as those behind the choices on destinations have been explored and interpreted by various theories. These theories are based on such factors as the accumulation of capital which attracts labour force, the cost-benefit aspects behind moving from one country to another, or on the research of push and pull factors that make or force people migrate. Without going into unnecessary detail about each of these theories, this thesis offers the categories currently used by the United Nations High Commissioner for Refugees (UNHCR), as tools for weighing the strength of international migration.

I.A.1. Categories of people living outside their country of origin

Some 125 million people, more than 12 times the population of Hungary and over 2% of the World's population, live outside their country of birth.⁷ These people may be divided into the following four categories:⁸

Refugee - a person *recognised as a refugee* under the 1951 United Nations Convention and/or its 1967 Protocol, - i.e. somebody, who The 1951 Convention relating to the Status of Refugees defines that a refugee is a person who,⁹

owing to a well-founded fear of being persecuted for reasons of race, religion, nationality, membership of a particular social group or political opinion, is outside the country of his nationality and is unable, or unwilling to avail himself of the protection of that country; or owing to such fear, is unwilling to avail himself of the

⁷ UN, 1994. Art. 1.

⁸ Stern, 1998.

⁹ Art. 1. (2).

protection of that country; or who, not having a nationality and being outside the country of his former habitual residence as a result of such event, is unable, or, owing to such fear, is unwilling to return to it.

This definition also includes those persons recognised under the 1969 Organisation of African Unity (OAU) Convention, in accordance with the UNHCR Statute, as well as persons granted a humanitarian status and/or temporary protection. Refugees may be recognised as such either on a group (*prima facie*) basis or following individual determination.¹⁰

Today there are some *11.5 million recognised refugees* in the world.¹¹ Obviously, there are hundreds of millions of other people who could apply for asylum with a good reason, e.g. Russians expelled from former USSR member states, or women in countries where they are not given the possibility of education or are forced to marry against their will. The low accessibility of the procedure is the principal reason for the relatively low number of recognised refugees.

Asylum-seeker - A person who applies for refugee status to the host Government or to UNHCR. Today some 1.3 million people seek asylum every year in the world.

¹⁰ According to the Introduction of the UNHCR Refugee Statistics website: Refugees are persons recognised to be outside their country of nationality or habitual residence for reasons that make them of direct concern to UNHCR.

¹¹ - Most frequently, *refugees* flee due to civil war and consequent government measures. In unstable societies, governments in power may disregard the interest of the whole nation, and protect a certain ethnic or religious group. The opposition has no other means than to engage in terrorism and guerrilla war. The civil population is caught between these fights and is forced to leave.

Migrant - A person who is not a refugee but decides to move to another country and live there permanently. Some 6 million persons belong to this category.

Temporary migrant – A migrant who does not relinquish her/his ties with their country of origin, and regularly returns there. Some 42 million people belong to this category.¹²

The category of the *internally displaced person* must also be mentioned here. These people have also been forced to flee their homes, but remain within the borders of their country of origin. According to different estimates, some 4-50 million (!) people are internally displaced today.

In theory, migrants move for the improvement of their life standards, refugees flee persecution. At the same time, it has to be taken into consideration that there is a strong relation between political conflict and socio-economic problems. Therefore the distinction between refugees and migrants is a difficult, sometimes impossible task, especially when people flee from a political system that is the cause of both economic deprivation and human rights abuses.

I.A.2. The origins of refugees and asylum seekers

The origins of the 11.5 million refugees and 1.3 million asylum seekers world-wide is strongly connected to political events, especially civil wars and the widespread violation of human rights. The following table shows the number of asylum applications by citizens of

¹² International migration is strongly related with modern forms of exploitation and slavery. Many international migrants are held in custody and exploited, therefore forming part of the group of the 27 million slaves who live today in the world. Bales, 1999, p. 4.

refugee-producing countries in the world in 1998. The Table also shows the recognition rates, or how many of the applicants were provided protection, during the same year.

TABLE I.1. ASYLUM APPLICATIONS BY ORIGIN BY CITIZENS OF MAJOR ASYLUM SEEKER SENDING COUNTRIES AND THE RESPECTIVE RECOGNITION RATES IN 1998.

Origin	Cases submitted during the year	Total recognition rate
Afghanistan	29,852	30.5
Bosnia and Herzegovina	10,271	20.8
China	12,216	10.0
Croatia	53,796	95.3
Dem. Rep. of Congo	12,419	26.3
Iran	13,544	39.8
Iraq	53,811	37.6
Rwanda	29,035	67.6
Somalia	22,389	60.3
Sri Lanka	15,824	25.0
Sudan	14,945	38.7
Turkey	21,871	16.9
Yugoslavia, Fed. Rep. of	97,298	9.3

Source: UNHCR Refugee Statistics website Table V.1.- Table includes countries with at least 10,000 applications in 1998.

At the same time, it should be emphasised here that the figures on the recognised refugees shown later in the thesis, both on European and on Hungarian level, are just partly connected to the migration of potential Geneva Convention refugees. This is due to the fact that not all potential Geneva Convention refugees request asylum and some of those who do are rejected or are given a temporary form of protection without legal status. In addition, given the lack of information on the identity, background, and history of asylum seekers, there remains the possibility that some non-refugees are also recognised as refugees. In other words, there are migrants, who apply for asylum without satisfying the requirements set by the 1951 Geneva Convention and they are sometimes accepted. They apply for various reasons, such as to gain a legal status for their stay in a country, to avoid being returned home or to a third country, or in the hope that their application will be successful despite their unfounded claim.

I.A.3. Destinations of asylum seekers and refugees

Theoretically, refugees would travel to the richest countries of the world. Indeed, there is a significant foreign population ratio in almost all of the world's wealthiest countries. This population includes those who have fled their countries of origin due to persecution. For example, foreign population ratio is above 5% in the wealthier countries of Northern Europe (e.g. in France - 10.4%, and above 5% in Austria, Germany, Netherlands, Belgium, UK, and Sweden). The ratio is even higher in North America (US 7.9%, Canada 15.5%) while in some countries it exceeds 20%, as in Australia (23.4%) and in Saudi Arabia (25.8%).¹³ Nevertheless, fifty-two percent of international migrants stay in developing countries and developed countries host 56.7 million migrants.¹⁴

The granting of asylum is even less linked to the developed world. The protected international refugee population is highest in Asia (39.5%), followed by Africa (29.1%), while Europe and North America have a smaller share (24.6% and 5.6% respectively).¹⁵

TABLE I.2. REGIONAL DISTRIBUTION OF RECOGNISED REFUGEES /ASYLUM SEEKERS BY CONTINENT, 1998.

Region of asylum	Refugees	Asylum Seekers	Total
Africa	3,270,860	63,350	3,334,210
Asia	4,744,730	27,610	4,772,340
Europe	2,667,830	576,900	3,244,730
Latin America/Caribbean	74,180	360	74,540
Northern America	659,800	645,600	1,305,400
Oceania	74,310	5,200	79,510
Total	11,491,710	1,319,020	12,810,730

UNHCR Refugee Statistics website Table I.1.

The application procedure for asylum is by all means not the prerequisite of refugee status. In some African and Asian states entire groups of people fleeing a war are regarded as

¹³ Stern, 1998.

¹⁴ Source: OECD, 1996, in: Niessen, J., Mochel, F. 1999, p. 5.

¹⁵ UNHCR Refugee Statistics website Table I.1.

refugees without any sort of individual recognition procedure, and without first becoming asylum seekers. Some 533,000 individuals applied for refugee status to Governments or to UNHCR during 1997, mostly in Europe and Northern America, where the request of asylum is required in order to be granted a status.¹⁶

I.A.4. Future trends in international migration for economic wealth and for asylum

The number of potential Geneva Convention refugees will continue to rise in the future: "Today, [data from 1996] there are 37 million refugees and internally displaced people in the world. By the year 2000 an estimated 50 million people will be forced to flee their homes."¹⁷ These mass movements will be driven by traditional conflict centres such as the Balkans or the Sudan, as well as highly populated countries with growing ethnic tensions such as India and Pakistan, and by emerging areas of conflict like the territories of the former Soviet Union.

Migration for economic wealth and for asylum is frequently intertwined as both potential Geneva Convention refugees and economic migrants endeavour to use the institution of asylum to settle in the First World. Therefore, it is equally important to understand the trends of migration for economic reasons. This type of migration will not dissipate either, since "out of the 6 billion people living in the world, only 800 million have a more or less

¹⁶ During the course of 1997, some 108,000 asylum-seekers were recognized as refugees, another 27,000 were granted protection on humanitarian grounds, whereas some 255,000 claims were rejected, resulting in an international average recognition rate of some 35 per cent in countries where application is required for the refugee status. This number reflects the impact of first instance decisions, and the result of decisions taken during appeal are not considered here. Data: UNHCR website Ibid.

¹⁷ International Federation of Red Cross and Red Crescent Societies, 1996, p. 3.

satisfactory life”¹⁸, and the gap between the world’s rich and poor is widening. Fertility rates such as 6.5 in Nigeria, 7.4 in Niger, and 3.4 in India also lead to an unprecedented population boom.¹⁹ Today, some 80 million young people reach working age in the Third World every year, explaining why in the labour force will double in these countries in the next 30 years. In Africa alone, the labour force will grow by an estimated 75% between 1990 and 2010. These trends will result in a significant pressure for people to migrate towards richer countries. It is evident that today’s figure of 1,5 million immigrants arriving each year to the First World will continue to grow steadily.²⁰ Natural disasters, which also contribute to migration, annually kill over 150.000 people and disrupt the lives of a further 129 million more. In 2006 as many as 220 million people could be regularly affected by natural disasters each year.²¹

Limited aid to the third world has equally limited impact to stop the growth of economic differences between the Third World, including now some of the former Soviet countries, and the First World. The governments of some countries, such as Turkey, the Philippines, South Korea, India, Pakistan, Bangladesh, Sri Lanka and Mexico, actually support the export of labour force and emigration in order to ease social tensions and to benefit from the financial assets transferred back by emigrants. State promoted or at least tolerated emigration will also contribute to the factors that push migrants to move to the First World or to its peripheries such as Hungary.

¹⁸ Dunai, 1998, p. 30.

¹⁹ Source: Stern, 1998.

²⁰ Austrian presidency, 1998, Art. 22.

²¹ International Federation of Red Cross and Red Crescent Societies, 1996, p.5.

I.A.5. The relation between migration and the quest for asylum

Economic migrants as well as potential Geneva Convention refugees, when they have the option, move towards countries where they hope to find smoother methods of settlement and integration. Clearly, economic and cultural wealth *and* the access to participation in that wealth constitutes the major pull factors behind international migration. According to recent studies, migration becomes a visible phenomenon when differences between life standards exceed the 1:3 ratio, and become mass movements above the 1:5 ratio.²² The previous settlement and supportive presence of family members and the existence of established communities may help the new arrivals in their access to financial wealth. Information on successful emigration, on the conditions of the labour market, rapidly reach the country of origin, through phone calls, letters, personal visits, etc. The tolerant attitude of the local society and the relative easiness of the language are also key aspects of the decision of where to migrate. In the latter factor, for example, the Hungarian language, given its hard-to-learn character is and will always be a deterrence for migrants and asylum seekers. In addition, former cultural, political and economic ties, such as those formed during the colonial period, may influence the choice of the country of destination.

The situation of asylum seekers, or those who try to find protection under the 1951 Geneva Convention, is slightly different. Asylum seekers go where they hope that the institution of asylum may help them to overcome the difficulties of the initial settlement and where it truly provides them with a real chance to rebuild their lives. The number of asylum seekers and the number of potential Geneva Convention refugees are only loosely connected. To

²² These figures are valid for movements within the US, but may be used as a background data for international migration. The figures also describe how much people cling to their homeland, and try to remain there until the economic differences get enormous. Source: Csaba, 1993, p. 15.

put it sharply, the geographical distribution of asylum applications, in addition to the general migratory considerations mentioned above, depends on the benefits that asylum seekers and recognised refugees are provided with. Lack of benefits and protection stops even potential Geneva Convention refugees from applying for asylum. An established institution of asylum, including attractive social benefits leads to dramatic increase in the number of applications, as many who do not meet the requirements of the 1951 Convention or the other supplementary definitions applied by different states also try their chances.

There are other aspects of the institution of asylum that also contribute to the number of applications. Where the request for asylum is gives potential Geneva Convention protection, or is the only protection from *refoulement*, the number of applications is high. Where illegal stay does not constitute a major danger of being returned, application for asylum is not seen as necessary. Furthermore, where asylum procedures mean bureaucratic obstacles lasting years without hope of success or where the Geneva Convention is interpreted in a very narrow manner, even potential Geneva Convention refugees may ignore the procedure. Hypothetically, choosing a European example, 95% of a group of potential Geneva Convention asylum seekers would apply for asylum in Germany, less than third in Spain, while nobody would apply in countries where the institution of asylum is non-existent, or the refugee status is only provided to whole groups of fleeing people without individual determination procedures. This is one of the main reasons of the great differences between the number of asylum applications in the countries of the European Union. (See Table 3.1. in Chapter III.)

I.B. Refugees in Hungary

Since 1988, Hungary has been influenced by the above presented international migration of economic migrants and refugees, due to its geographical location on the transit zone of the

East-West and the South-North migration, as well as to its closeness to the Balkans. Citizens of the former Soviet Union and those fleeing civil war and political tensions in the Balkans have tried and will continue to try to make their way to the West through Hungary. Similarly, a number of refugees from Asia and Africa also follow this migration route at their own will, according to the plans of human smugglers, or just by chance. This sub-chapter, as already mentioned at the beginning of this Chapter, discusses how international migration appears in Hungary, and how it transforms into an asylum and illegal migration phenomena. The changes in the magnitudes of asylum seekers, refugees, illegal migrants show the difficulties Hungarian policy and lawmakers have had to face, which is revealed later on in Chapter IV.

I.B.1. The first refugee waves

The first large wave of refugees arrived in 1988 when Hungarian authorities registered 13,000 persons entering the country seeking temporary or long-term protection. The same figure was 17,000 in 1989 and 18,000 in 1990²³. According to other sources, during these years some 60,000 persons, mostly ethnic Hungarians, arrived from Romania fleeing a politically and economically unstable country²⁴. In 1991, the civil war in Yugoslavia broke out, causing a sharp increase in the number of refugees, totalling 75,000 until 1995. From 1988 until 1995-1996, the majority of these people coming to Hungary found a welcoming atmosphere, and the asylum system ensured the legal basis for their stay.

²³ Source: Dovenyi, 1995, p. 18.

²⁴ UNHCR Website: <http://www.unhcr.ch/world/euro/hungary.htm>

By 1995, the number of registered refugees had fallen to some 8,000 as many returned home, moved on or gained citizenship.²⁵ The refugee camps were half-filled. Later that year though, new ethnic cleansing and combat in Bosnia led to the arrival of 6,000 new persons, whom were provided temporary protection. After 1995, the arrival of new refugees constituted a constant factor in domestic affairs.

During these years, many of those who arrived to Hungary had no opportunity to qualify for refugee status, and practically never took part in the refugee procedure. The administration was not prepared to control and fully administer the applications for asylum. Out of the 133,000 persons who sought asylum in Hungary between 1988 and 1995, only some 5,000 took part in a complete recognition process.²⁶ Of the 133,000, 73,888 persons (55.5%) were given temporarily protected status²⁷, frequently without adequate determination as to whether they satisfied the refugee definition in Decree 101 of Sept. 1989 on the Recognition Process for Refugees. The high recognition rates clearly show that Hungary, despite its underdeveloped administrative framework, found it important until the mid-90s to welcome asylum seekers, and provide them with protection.

However, these high recognition rates under the Geneva Convention must be understood in terms of the arrival of asylum seekers of Hungarian origin from neighbouring countries. The refugee determination framework was in their favour, despite the neutral terms of the law. The system included the danger of the rejection of other legitimate asylum seekers. The background of the special treatment of ethnic Hungarians is partly explained by Art

²⁵ There is no statistical data available about the exact whereabouts of the formerly recognised refugees, as no authority was in charge of collecting all relevant information.

²⁶ UNHCR Ibid.

²⁷ Source: Office of Refugee and Migration Affairs

70/A of the Constitution, which defines persecution on the basis of language as grounds for asylum and protection, thus providing an additional reason protection compared to the Geneva Convention. Ethnic Hungarians from neighbouring countries could therefore apply easier for asylum. As waves of immigrants from Romania and the former Yugoslavia came to a sharp decrease, more attention was given to other sources of the immigrant influx, including those from non-European countries. South-North migration finally reached equal importance with East-West migration in Hungary.

I.B.2. Asylum seekers and refugees today

The institution of asylum went through enormous changes after 1995. Recognition rates, as well as the number of applications, began to fall. The number of asylum seekers was approximately 800 in 1995 (not including the 6,000 Bosnian refugees), 700 in 1996, and 1,100 in 1997. In 1998, the number of asylum seekers rapidly increased reaching 7,118, 7 times more than the same figure for 1997, and to 11,499 in 1999. The dramatic increase in the number of applications reflected the institutionalisation of the protection provided for refugees, i.e. the requirement to apply within a formal procedure set by the new Law on Asylum²⁸. In addition, the closing down of Western borders and the growing migration pressure on the country also lead to an increase of applications as demonstrated by the following table.

²⁸ Law 1997:139 on Asylum

TABLE I.3. MAIN STATISTICAL DATA ON ASYLUM SEEKERS PARTICIPATING IN A FORMAL RECOGNITION PROCEDURE IN HUNGARY BETWEEN 1989 AND 1999.

Year	1989	1990	1991	1992	1993	1994	1995	1996	1997	1998	1999
1.	36	3,520	921	458	468	207	130	152	177	7,118	11,499
2.	35	2,561	434	472	361	239	116	66	27	362	313
3.	97.2	72.7	47.1	103*	77.1	115.5*	89.2	50	15.25	6.1**	5.5**
4.	-	-	-	-	-	-	-	-	-	232	1,776
5.	-	-	-	-	-	-	-	-	-	3.9**	31.1**
6.	-	548	223	58	21	13	5	31	57	1,174	5,786

1. Number of applications

2. Refugee status granted (excluding subsidiary forms of protection)

3. Recognition rate - greatly depends on the calculation. Usually cancelled procedures are not considered as negative decisions.

4. Subsidiary form of protection granted

5. Recognition rate under subsidiary protection

6. Procedure cancelled (basically when the applicant disappears during the procedure)

*More than 100%, because preceding years' applications were recognised this year.

**Subtracting from total applications the number of cancelled procedures.

Source: Office of Refugee and Migration Affairs.

In 1998, 4,552 applications were considered out of the total 7,118 applications made. Finally, 360 persons (8 % of the applicants), including 177 Afghans, 43 Iraqis, 35 Yugoslavs and 22 persons from Cameroon, were granted refugee status. In addition, 230 foreigners, (5.1 % of the applicants), including 166 Yugoslavs, 30 Afghans and 18 Iraqis received the one-year protection 'person authorised to stay' status.²⁹ In 1999, the number of those recognised was 313 (2.7%), and 1,776 foreigners received 'person authorised to stay' status. The refugee status was mainly provided to Afghans (127 persons), Iraqis (60 persons), and to Cameroonians (17). The 'person authorised to stay' status was provided mostly for Yugoslavs (1,408 persons) and Afghans (223 persons).³⁰

Today, other means, principally through employment, are the main channels for foreigners to stay in Hungary. In 1998, there were 69,377 foreigners with immigrant status, 52,589 with permanent residence permits and 24,995 with short-term residence permits in

²⁹ UNHCR, Statistical Unit, 1999, p. 12. Person authorised to stay status: One year renewable protection for those whose return would lead to inhuman or degrading treatment against the stipulations of the Convention against Torture.

³⁰ Source: Refugee Affairs Directorate of the Immigration and Citizenship Office

Hungary.³¹ In 1999, 71,705 foreigners lived in Hungary with an immigrant status, including 30,443 Romanian and 9,138 Yugoslav and 5,321 German citizens. During the same year, 60,894 persons stayed in the country with long-term residence permit, including 11,825 Romanians, 4,849 Chinese, 3,757 Germans, and 3,333 US citizens. Out of those 30,000 who applied for long-term residence permit, only 499 were rejected, and the rest, including 5,330 students and 18,772 employees and business people received the permit. Furthermore, out of 22,248 applicants, 22,088 persons received short-term residence permit.

The previous preference for ethnic Hungarian asylum seekers has ceased to exist. Although asylum seekers are not recorded according to their nationality but instead by their country of origin, it is evident that that Hungarian refugees would come from Romania, Yugoslavia, Ukraine and Slovakia. In 1998, only 1 Romanian received refugee status, no one received it from Ukraine and Slovakia, while the bulk of those 201 persons from Yugoslavia who received either refugee status or the one-year long 'person authorised to stay' status were mostly Kosovars.

The number of recognised refugees and other protected foreigners³² still staying in the country is difficult to establish, given the lack of precise administration about those who returned to their country of origin or travelled on to a third country. According to UNHCR calculations, the number of refugees staying in Hungary was 5,400 in 1998.³³ The number of those waiting for status determination, or the number of asylum seekers, was around

³¹ Source: SOPEMI, 1998, p. 50.

³² Those provided temporary protection before the entry into force of the Law 1997:139 on Asylum before 1998 and those with the 'person authorised to stay' status.

³³ From UNHCR Refugee Statistics website: Table I.1.

2,600 during the same year. On average, there were also some 1,000 illegal migrants or rejected asylum seekers who stayed in the community centres of the border guards under the surveillance of the alien police.

Immigrants from non-European origins have received growing attention. For example, in March 1999, citizens of 107 countries were represented in the community centres of the border guards, which hold illegal migrants, many from African and Asian countries.³⁴ During the first half of 1997, out of those who applied for asylum in Hungary, 74,4% were from a non-European country. During 1998, 7,100 persons applied for refugee status in Hungary;³⁵ 980 persons (14%) were from Africa, 2530 (36%) from Asia, in addition to those 3,540 (50%) from Europe, including 3,300 persons from the Federal Republic of Yugoslavia. Fifty stateless persons also applied for refugee status. During the Kosovo crises, the majority of asylum seekers arriving to Hungary were from Kosovo, but the proportion of Asians and Africans remained important.

I.B.3. The reasons behind applications today

In order to understand the reasons for applying for asylum in Hungary, it is important to emphasise that the operation of the institution of asylum in Hungary goes hand in hand

³⁴ Figure mentioned by József Dúzs, colonel, head of the National Headquarters of the Border Guards during a meeting between NGOs and Headquarters of Border Guards on 23 March 1999.

³⁵ These numbers do not compare with similar statistics from Western countries, such as Germany and the US, where in 1996 the total number of asylum applications was 116,367 and 122,643 respectively, and in 1997, 104,353 and 79,803 respectively. The Hungarian statistics are more comparable to the Italian and Spanish figures, where the same figures were 573 and 3,636 for 1996 and 1,714 and 4,975 for 1997. However, in these countries, the dimensions of illegal migration are far greater, reaching one million in Italy. Data from: IGC, 1997, p. 7. and p. 10.

with the management of illegal migration, focusing obviously on controlling illegal migration to the West. Hungary is a country that is simply regarded as a transit zone for the majority of illegal migrants, a 'springboard to further migration' which allows migrants to settle, experiment and prepare for further migration.³⁶ However, Hungary may easily become a final destination for many as the routes for moving on are blocked and a stay planned for a couple of hours or days becomes an extended period of time.

According to a Phare study,³⁷ Budapest, similar to Moscow and Bucharest, is one of the final locations for illegal migrants before an entry to the European Union. The study presents some interesting details about the major groups of illegal migrants:

- Romanians, especially ethnic minorities, form an active wave, and may enter Slovenia from Hungary without a visa. There they may take the next step through illegal entry to Italy, a member country of the EU.
- Citizens of Yugoslavia frequently change their itineraries. Instead of the direct route through Slovenia to Italy, they may travel north and then enter the EU through Hungary, Slovakia and the Czech Republic.
- Asian migrants, especially those from Vietnam, China, Pakistan, India, Sri Lanka and the Philippines, use Hungary as the final stop before entering the EU. They often arrive to Hungary with an illegally acquired or false tourist visa. The Asian minority in Budapest helps to support their temporary stay in Hungary.
- Foreigners from the Middle East (Syrians, Afghans, Turks, Iraqis, Iranians, Egyptians, etc.) frequently form groups in Istanbul and then travel to Budapest through Bucharest.

³⁶ IOM, 1996, p.28.

³⁷ Phare, 1998, Technical background study, p. 7.

Some 100,000 persons wait in Ukraine for an opportunity to enter Hungary in order to get to the EU.

Today, the majority of those who apply for asylum are migrants who wish to move on. These migrants use the application procedure to gain time and to be transferred to an open facility for asylum seekers from the closed facilities run for migrants found during illegal border crossing or inside the country without proper documentation. In 1998, out of the total 7,118 asylum seekers, 5,045 arrived illegally, as for them this is the only way to enter the country.

I.B.4. Hungary on the Schengen border

Austria became the ninth member of the Schengen agreement on 1 December 1997, and as the internal borders of the Schengen countries are being eliminated, the Austrian-Hungarian border is the major checkpoint between Hungary and the West. With the membership of Austria to the European Union, Hungary found itself on the Schengen border separating the target area of migration from the less attractive East. Border control strengthened due to Austria's obligations as the 'defender' of the common EU border, and also due to Hungary's intention - pushed by Austrian demands - to show its capabilities of controlling migrations flows, which is highly expected of an EU candidate. Obviously, complete border control is just a theoretical objective, since an entire army would be needed on patrolling duty. The impossibility of total border control is shown by the experience of highly wealthy states that may spend far higher amounts on such purposes without complete success.³⁸

³⁸ According to the Immigration and Naturalisation Service of the United States, some 100,000 Chinese citizens arrive to the US illegally every year. Source: Nyíri, 1999, p. 42.

A readmission agreement was signed with Austria on 17 April 1997, obliging both countries to re-admit any third country national who illegally crosses their common border, regardless of whether they are asylum seekers, including those without identity papers. In practice, the agreement presents an additional task for the Hungarian border guards and police to readmit these migrants and offer them a place to stay until they may be sent back to their country of origin or to a safe country they have crossed on their way to Hungary.

Despite these efforts to curb migration, the Austrian border is still the major route for those travelling from the East to the West, and there has been a sharp increase in illegal migration. There is a significant lack of modern technology on the border, such as off-road vans and carbon-dioxide detectors to locate people hiding in lorries or vans. The border guard authorities lack financial means to strengthen control on borders, which otherwise would be important as a requirement for Hungary's accession to the European Union.

The dramatic expansion of the phenomena of illegal border crossing has raised the concern of certain countries of Western Europe. In particular, Germany, Switzerland and Austria emphasised their conviction that their neighbours in the East, Hungary included, are not doing enough to combat human smuggling. Consequently, European Union sources regularly confirm that Hungary is expected to strengthen its border, and stress that efficient border management and the solution of illegal migration are central accession requirements for the European Union.³⁹

I.B.5. Crossing the borders

There is a constant pressure on Hungary's borders by those who wish to enter or leave the country illegally. The number of persons apprehended by the border guards during illegal

³⁹ E.g. in the European Commission Reports, 1998a and 1999.

border crossing has grown steadily after 1996, but decreased in 1999. More than 75% of these illegal migrants were Yugoslav or Romanian citizens, who, according to statistical figures of the Border Guards, attempted to leave the country to the West after a legal entry.

⁴⁰ However, with all Border Guards statistics it has to be mentioned that a certain part of illegal migration of people are not revealed them, i.e. these figures demonstrate only those cases that the Border Guards is aware of.

TABLE I.4. NUMBER OF ILLEGAL ENTRIES TO AND EXITS FROM THE COUNTRY, AND NUMBER OF PERSONS DETECTED DURING ILLEGAL EXIT FROM THE COUNTRY IN 1995-1999

	1995	1996	1997	1998	1999
Illegal entry to the country ⁴¹	3,485	3,084	3,045	4,658	2,109
Illegal exit from the country ⁴²	2,461	2,412	3,488	5,463	4,374
Attempted illegal exit from the country ⁴³	6,081	5,081	6,533	7,896	6,734

Source: Statistical Yearbook 1999⁴⁴

The overwhelming majority of migrants reach Hungary through Romania, Ukraine and Serbia. Although Serbia was blocked as a migration route during the Kosovo crisis, it again became a major entry point for groups, such as the Chinese, who travel via Moscow or Kiev and to Belgrade. Entering Hungary is much easier for those who have the adequate

⁴⁰ For example, between 1 January and 17 May 1999, 3,190 persons were apprehended while crossing Hungarian borders illegally, among whom 898 tried to enter and 2,292 intended to leave the country. During the same period, 1,514 persons were returned by force from other countries on the migration routes to the West, on the basis of readmission agreements. Source: Border Guards National Directorate

⁴¹ Includes foreigners apprehended right after the entry or later on inside the country, or whose illegal entry was detected, e.g. was seen from the distance but could not be apprehended.

⁴² Includes mostly those returned under readmission agreements.

⁴³ Includes foreigners apprehended right before or during crossing the border illegally.

⁴⁴ Source: National Border Guards Directorate

financial means, or travel documents to enter the country, not to mention those who come from neighbouring countries, or who even speak language. A number of foreigners have been denied entry to the country: in 1997, 54,672 persons (including 2,210 who presented forged or false documents), in 1998, 32,854, and in 1999, 31,881 foreigners.

The most significant pressure remains on the borders leading to the West. Illegal migrants hope to reach Austria, Germany, Italy, France, Great Britain or Switzerland, frequently by transiting first Slovenia, Croatia, or Slovakia. Between September 1990 and the end of 1996, a total of 38,552 foreigners originating from 65 different countries were arrested while trying to cross the border from Hungary to Austria.⁴⁵ In 1997, according to estimates, more than 10,000 persons tried to leave Hungary illegally; the largest group being Romanians (3,962), Turks (1,315), Pakistanis (1,127), Bulgarians (766), Bangladeshis (626), Albanians (511), Indians (468), Hungarians (402) and nationals of the CIS (341). Some 3000 tried to cross the border on the Slovenian border, as much as on the Croatian and Slovakian borders together. The rest, some 4000 tried the route towards Austria.⁴⁶ In 1998, 818 persons were arrested after illegal border crossings and 1,171 during illegal entry.

More detailed statistics are presented in the following table, which shows the same figures by border zone during 1998 and 1999:

⁴⁵ Migration News Sheet, 1997, p. 5.

⁴⁶ Source: Border Guards Directorate

TABLE 1.5. NUMBER OF ILLEGAL ENTRIES TO AND EXITS FROM THE COUNTRY, AND NUMBER OF PERSONS DETECTED DURING ILLEGAL EXIT FROM THE COUNTRY IN 1998-1999 BY DESTINATION COUNTRY

	1998			1999		
	illegal entry from	Illegal exit to	att. ill. exit to	Illegal entry from	illegal exit to	att. ill. exit to
Austria	125	3,460	3,452	69	3,187	3,678
Yugoslavia	2,043	1,290	2,692	481	25	21
Romania	757	28	30	353	23	26
Ukraine	868	2		151	1	4
Slovakia	114	654	1,722	52	114	904
Total ⁴⁷	4,658	5,463	7,896	1,978	4,374	6,734

Source: National Border Guards Directorate

As these figures reveal, the bulk of illegal migrants enter from Yugoslavia, Ukraine and Romania, while the major destination country is Austria. The large number of illegal exits and attempted illegal exits to Yugoslavia is explained by the illegal trade, e.g. that of stolen cars through the less efficiently protected border with that country.

Today, despite the strengthening of the borders and the more strict application of readmission agreements under the political pressure of the European Union, the ratio or the number of those successfully leaving the country is still uncertain. According to some Border Guards officials⁴⁸, migrants have 5-10% chance to cross the borders to the West, while other sources⁴⁹ confirm a rise in illegal migration.

The above aspects of illegal border crossing, together with the characteristics of human smuggling detailed in the following sub-chapter have great influence on the atmosphere in

⁴⁷ Total number includes those apprehended by the Budapest Border Guards Directorate or at border with countries not on the list, as well as those whose presence was detected later on and documented at the National Border Guards Directorate

⁴⁸ Estimate provided by József Dúzs, Head of Alien Police and Refugee Department, National Headquarters of Border Guards

⁴⁹ E.g. IOM in Wien

which the relevant aspects of the law are framed, and how they are implemented. These legal aspects will be detailed in Chapter III.

I.B.6. Human smuggling

In order to enter or leave the country, migrants without official travel documents, including those with a potential Geneva Convention asylum claim, frequently need to rely on information from other migrants, or more often, on the intervention of smugglers. The phenomenon of human smuggling goes hand in hand with migratory waves. In this sense, a small portion of one of the most profitable activities of the world has been taking place at the borders of Hungary since 1988. Human smuggling helps some 4 million people into foreign countries every year, for a total fee of about \$7 billion USD annually.⁵⁰

The structured and professional human smuggling organisations that have emerged in Hungary and elsewhere perform several functions by largely separately working individuals or teams directed by central co-ordinators of the whole activity. The functions the individual persons or teams perform are: promotion of the 'service', the transportation of migrants, the bribing of officials, the geographical orientation of migrants, the support of migrants on the way, and the cashing in of smuggling fees.⁵¹ Human smuggling presupposes various illegal activities, such as bribing, the falsification of travel documents and the breaching of immigration regulations. In addition, human smuggling is frequently connected to other types of criminal activity, such as prostitution and other forms of sexual exploitation, car theft, robberies, and the illegal trade of firearms and narcotics.

⁵⁰ Source: UN, 1997, p. 1.

⁵¹ Budapest Group Secretariat and Norway, 1997, Art. 126.

Human smuggling is becoming more organised, and is shifting from individual activity towards the establishment of specialised networks or full organisation structures. This is demonstrated by the fact that in 1998, 788 criminal actions were found to have been committed by a criminal organisation in Hungary, and most of them (705) were related to human smuggling.⁵² Some 20-30 human smuggling groups have been established in the country, usually without the co-operation of one another.⁵³

Those refugees coming from more distant countries especially have to rely on such help, in order not to lose that chance of becoming one of the 'lucky ones' who make it through. Smugglers may earn enormous profits by helping people cross the borders. For example, depending on the quality of service smugglers request from 50 DM to several thousand USD for one 'journey'.⁵⁴ Some Chinese citizens paid 1,700 USD for a journey from Belgrade to Szeged, a Southern Hungarian city.⁵⁵ The lowest quality may constitute a provision of a local map and a brief explanation on where and when to cross the border in order to avoid border guard patrols. Transport from the main railway station of Budapest to Austria is usually around 1,000 DM.

These tariffs may seem quite modest in comparison to human smuggling covering longer distances: for a journey from Turkey to Switzerland the tariff to be paid may go above 10,000 USD. The tariff may reach even 30,000 USD, e.g. for an 'assisted journey' from China to the same destination. However, there are more limited prices, depending on the bargaining power of the two parties, or the competition of smugglers: the tariff for the

⁵² Határőr, 1999, Vol. 52/23. p. 22.

⁵³ Source: Népszava, 13, Oct. 1999.

⁵⁴ Where not indicated otherwise, tariffs are gained from direct communication with migrants.

⁵⁵ Source: *Petőfi Népe*, 15 Nov. 1999. p.1.

journey from Turkey to Germany may be 3,500 USD, and 1,000-4,000 USD from the Far East to the same destination. The price is obviously under constant negotiation between service providers and clients, before, under and after the journey. Many of those who pay these fees may end up in different countries, such as Hungary, as the smuggled people are noticed by the authorities within the country, or if smugglers' 'work ethics' find the option of leaving clients in Hungary easier than facing the difficulties of entry to the EU.⁵⁶

The sale of passports is also a profitable enterprise for those providing assistance in illegal border crossings. The price of a Hungarian passport is about 50,000-100,000 HUF (200-400 USD) on the black market. Some Hungarians, especially those showing a resemblance to Turkish or Iraqi citizens sell their passports, and those buying them may enter the EU as Hungarian passport holders.

I.C. Conclusion

Present chapter revealed how much Hungary is effected by international forced migration. Hungary have attracted refugees from the neighbouring countries, ethnic Hungarians and those fleeing civil war in the Balkans, but given its geographical position it has always as an key element of the East-West and South-North migration route since 1998. According to international migration trends, the number of migrants reaching Hungary has been growing since the political transition. However, most of these migrants wish to move on, which explains the great number of illegal border crossing activities, and the human smuggling in and especially out from the country. Migrants reaching Hungary apply for asylum in order to avoid expulsion, thus figures on the number of asylum seekers are based on different plans of migrants then the respective figures from countries of the First World. This

⁵⁶ Information on bribing fees is based on comments and estimates of migrants.

Chapter with its factual and numerical look on migration helps to understand the practical importance of international legal principles concerning migration described in Chapter II. –
The international legal obligations of Hungary.

II. THE INTERNATIONAL LEGAL OBLIGATIONS OF HUNGARY

Already before the political transition in 1989-1990, Hungary became a signatory to some of the major international human rights agreements. These instruments significantly influence the national policies related to asylum matters, but the concrete application of their underlying principles is shaped by the country's changing geopolitical situation. Hungary became a party to the *International Covenant on Civil and Political Rights*, the *United Nations Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment* in 1974 and 1986 respectively. During the political transition Hungary ratified the *1951 Geneva Convention on Refugees* and its *1967 Protocol* in 1989, and in 1993, the *European Convention for the Protection of Human Rights and Fundamental Freedoms*.

The stipulations of the Hungarian Constitution include the main principles of these international instruments, and Article 7 of the Constitution confirms that “[t]he legal system of the Republic of Hungary shall respect the universally accepted rules of international law, and shall ensure furthermore, the accord between the obligations assumed under international law and domestic law.”

This sub-chapter summarises the most important instruments signed by Hungary, those directly related to refugees, and those that include indirect articles on their protection. The brief presentation below of these major agreements is the basis for the examination of Hungary's compliance with international principles of human rights in Chapter IV. – *The institution of asylum in Hungary*. Obviously, a full survey of Hungary's compliance with international legal instruments would be an enormous enterprise in itself, exceeding the capacities of the present thesis.

The main problematic areas discussed later on in Chapter IV, concerning the situation of the Hungarian institution of asylum are:

- *restrictions on entry for potential asylum seekers (visa restrictions, carriers' liability, border protection.)*
- *the basis for recognition*
- *the application of the safe third country principle*
- *detention of asylum seekers (including the prohibition of detention, the observation of the prohibition of inhuman and degrading treatment, as well as the observation of the religious rights and the right to family life)*
- *the observation of the principle of non-refoulement*

Therefore, only those provisions of international legal instruments that provide an insight to the above focal concerns of the institution of asylum are presented bellow.

II.A. The Universal Declaration of Human Rights⁵⁷

The present international legal instruments and their interpretations are characterised by a delicate balance between defending states from mass-influxes of foreigners and providing potential Geneva Convention refugees with the protection they deserve under international law. These agreements originate from the *Universal Declaration of Human Rights*, a non-binding but standard-setting instrument. Article 14 of the Declaration is related to asylum, and provides for “the right to seek and enjoy in other countries asylum from persecution”.⁵⁸

⁵⁷ UN GA., 1949, Supp. 127.

⁵⁸ This right may be restricted in the case of prosecutions genuinely arising from non-political crimes and from acts contrary to the purposes and principles of the United Nations.

The right to seek asylum must precede the enjoyment of asylum, and the two elements are intertwined. However, the *Universal Declaration of Human Rights* does not mention the right to be *granted* asylum, which is also interrelated to the rights of seeking and enjoying asylum. It is up to the signatory states to decide on the exact conditions of how and to whom they will provide this protection, which is facilitated by the fact that none of the international instruments provide for their obligation to grant asylum.

II.B. The 1951 Geneva Convention

The international community created specific legal instruments to protect potential Geneva Convention refugees and asylum seekers. The foundation for today's international refugee law is the *1951 Geneva Convention Relating to the Status of Refugees*, which gave protection to refugees who fled their countries before 1951. The *1967 New York Protocol* applies the provisions of the 1951 Geneva Convention to refugees who meet the requirements of this Convention, but who fled their countries due to events after the 1 January 1951 deadline. Hungary acceded to the Geneva Convention and its Protocol with Government Decree 15 in March of 1989, but with a geographical reservation, which limited the country's obligations to protect exclusively refugees of European origin. The geographical reservation was eliminated only 8 years later by Law 1997:139.

Even as the Geneva Convention obliges states to protect refugees, there are still conflicting interpretations over the exact definition of the term 'refugee'.⁵⁹ The Geneva Convention

⁵⁹ Article 1/A/2 of the 1951 Geneva Convention spells out that "[t]he term of refugee will apply for any person who, subsequent to events before January 1st 1951 and to well-founded fears of persecution due to race, religion, nationality, belonging to a certain social group of political opinion, is outside the country whose citizenship he/she has and who cannot, or, due to his fear, does not wish to be protected by his country, or who, having no citizenship and being outside the country of usual residence, subsequent to such event,

was originally created to protect those persons fleeing the Communist regimes of Central and East Europe, so it is understandable that the above definition of the term 'refugee' today requires states' individual interpretation. Modern political scientists and academics have tried to modernise the interpretation of the Convention, through the study of the historical and political context and the principles behind its creation. One of these interpretations, still without legal status, states that "[a] Convention refugee is a person outside her country of origin who needs and deserves protection because she reasonably believes that her civil or political status puts her at risk of serious harm in that country, and that her own government cannot or will not protect her."⁶⁰

The Geneva Convention prohibits the return, or 'refoulement', of refugees to territories where their life would be in danger on account of their race, religion, nationality, membership to a particular social group or political opinion. The principle of the 'non-refoulement' is one of the major cornerstones of international refugee law.

Despite its generous provisions, the Convention does not provide for an exact refugee recognition procedure, in other words 'it is left to each Contracting state to establish the procedure that it considers most appropriate'⁶¹, and there is no international body which would monitor the fulfilment of the provisions of the Convention.

The Geneva Convention, similarly to other international legal regulations on migration and asylum concentrate on the control of movements of people, and especially on the limitation

cannot or, due to that respective fear, does not wish to return." The Convention includes cessation clauses, which show the circumstances under which a refugee loses his status, and exclusion clauses, which name the situations where a person is denied the possibility to apply for protection under the Convention.

⁶⁰ Hathaway, 1999, Verbal statement

⁶¹ UNHCR, 1979, par. 189.

of immigration from the poorer to the wealthier countries of the world. In this context, “refugee law is a loose gate in the dam of immigration control”⁶², a gate that helps to channel the inevitable, and frequently undesirable, influx of migrants. International instruments, such as the Geneva Convention balance on the narrow bridge between the point where there is still internationally guaranteed protection for refugees, and where states may still reserve their absolute power on whom to welcome to their territories.

II.C. Protection of refugees under international human rights law

The *International Covenant on Civil and Political Rights (ICCPR)*⁶³ also includes articles that protect refugees. Hungary signed the Covenant as early as on 25 March 1969 and ratified it on 17 Jan 1974. Article 13 of ICCPR provides for the protection for aliens, lawfully in the territory of a state, from arbitrary expulsion:

An alien lawfully in the territory of a State Party to the present Covenant may be expelled therefrom only in pursuance of a decision reached in accordance with law, and shall, except where compelling reasons of national security otherwise require, be allowed to submit the reasons against his expulsion and to have his case reviewed by, and be represented for the purpose before, the competent authority or a person or persons especially designated by the competent authority.

Article 7 of ICCPR states: “No one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment.” This article may be invoked for the evaluation of the

⁶² Hathaway, 1999, Verbal statement

⁶³ Adopted and opened for signature, ratification and accession by General Assembly Resolution 2200 A (XXI) of 16 December 1966.

detention of any asylum seekers, as well as recognised and rejected refugees. Article 10 is even more specific on the custody or detention of persons, including foreigners, as it states: “All persons deprived of their liberty shall be treated with humanity and with respect for the inherent dignity of the human person.”

Article 2. (1) of the *United Nations Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment*⁶⁴ (signed by Hungary on 28 Nov. 1986 and ratified on 15 Apr. 1987; proclaimed in Hungary Government Decree 3. of 1988) states that, “[e]ach State Party shall take effective legislative, administrative, judicial or other measures to prevent acts of torture in any territory under its jurisdiction.” This provision comes is also relevant to the analysis of the frequently harsh conditions asylum seekers and/or refugees live in.

The Convention includes a notable stipulation for the protection of refugees, as it states: “[n]o State Party shall expel, return ‘*refouler*’ or extradite a person to another State where there are substantial grounds for believing that he would be in danger of being subjected to torture.” Article 3 (2) adds that, “[f]or the purpose of determining whether there are such grounds, the competent authorities shall take into account the relevant considerations including, where applicable, the existence in the State concerned of a consistent pattern of gross, flagrant mass violation of human rights.”

The *European Convention for the Protection of Human Rights and Fundamental Freedoms*⁶⁵ (proclaimed in Hungary by Law 1993:31) does not protect asylum seekers and migrants explicitly, but it provides for their protection through the prohibition of torture,

⁶⁴ Adopted and opened for signature, ratification and accession by General Assembly Resolution 39/46 of 10 December 1984.

⁶⁵ Signed in Rome on 4 November

inhuman or degrading treatment. Article 3 of the Convention states: “[n]o one shall be subjected to torture or to inhuman or degrading treatment or punishment.” This provision prohibits states from treating any asylum seeker or refugee in a manner which would amount to torture and inhuman or degrading treatment. In the *Greek Case*⁶⁶, the Commission explained the meaning of the terms of Art. 3:

The notion of inhuman treatment covers at least such treatment as deliberately causes severe suffering, mental or physical, such in the particular situation, is unjustifiable. The word ‘torture’ is often used to describe inhuman treatment, which has a purpose, such as the obtaining of information or confession, or the infliction of punishment, and is generally an aggravated form of inhuman treatment. Treatment of punishment of an individual may be said to be degrading if it grossly humiliates him before others or drives him to act against his will or conscience.

The same Article 3., and more explicitly its interpretations by the European Court and Commission of Human Rights also prohibit the return of foreigners to a country where they could face such treatment. The European Court and Commission⁶⁷ have stated in several cases that this article bans expulsion, if there is a serious risk of torture, inhuman or

⁶⁶ Report of 5 November 1969, Yearbook XII. P. 186.

⁶⁷ Case law of ECHR <http://www.dhcour.coe.fr/hudoc/help/en/help.htm>

degrading treatment or punishment: (e.g. Cruz Varas and Others⁶⁸, Lynas v. Switzerland⁶⁹, Vilvarajah v. U.K.⁷⁰, and Soering⁷¹)

It is important to notice that the influence of ECHR case law is still limited in Hungary, partly due to the limited number of applications declared admissible by the ECHR. For example, in 1999, out of the 94 applications, 53 were declared inadmissible or struck off, and only one was declared admissible,⁷² thus the publicity given to ECHR decisions is not strengthened by an extended Hungary-specific case law. Furthermore, the Convention specifies the reasons for which one may be detained. This list is to be analysed when asylum seekers are taken into closed facilities. The Covenant requires the respect of family life,⁷³ which draws the attention to the importance of respect for refugee families also. The freedom of religion, and the manifestation of religion in worship and observance, is also protected by the Convention. It calls upon states to ensure that all persons, including refugees, may practice their religion without obstruction, despite the vicissitudes related to their stay abroad.

The Convention on the Rights of the Child is a special instrument used to evaluate the situation and rights of refugee children. The Convention declares that “[I]n all actions concerning children, whether undertaken by public or private social welfare institutions,

⁶⁸ 46/1990/237/307

⁶⁹ application No. 7317/75

⁷⁰ application No 13161/87

⁷¹ 1/1989/161/217

⁷² Survey of the activities of ECHR in 1999 <http://www.echr.coe.int/eng/sclect%20folder.html>

⁷³ Art. 8.

courts of law, administrative or legislative bodies, the best interests of the child be a primary consideration.”⁷⁴ The Convention separately draws the attention to all children who seek refugee status or who are considered refugees. They are to receive appropriate protection and humanitarian assistance to ensure they receive the rights enshrined in the Convention.⁷⁵ These rights include for example, the right to the enjoyment of the highest attainable standard of health⁷⁶ and the right to education.⁷⁷ The same Convention includes another article related to the situation of refugee children in Hungary: ‘[e]very child deprived of liberty shall be treated with humanity and respect for the inherent dignity of the human person, and in a manner which takes into account the needs of persons of his or her age.’⁷⁸

The above selection of legal instruments, will serve in Chapter IV. – *The institution of asylum in Hungary*, as the analytical tools for the evaluation of the legal and administrative framework influencing the conditions and possibilities of asylum seekers in Hungary.

⁷⁴ Art. 3 (1)

⁷⁵ Art. 22 (1)

⁷⁶ Art. 34 (1)

⁷⁷ Art. 28 (1)

⁷⁸ Art. 37 (c)

III. ACCESSION TO THE EUROPEAN UNION

This chapter first outlines the characteristics of Hungary's efforts at EU accession, and then presents the asylum and migration related 'acquis communautaire', i.e. the community requirements of the EU. This provides the background for the next part of the Thesis, Chapter IV. – *The institution of asylum in Hungary*, which focuses on the present legal, administrative and NGO framework of refugee issues in Hungary, in light of the international legal instruments the country has ratified partly under the influence of the accession procedure. Thus, the analyses of the institution of asylum in the next chapter are provided in a wider interpretative context.

While Hungary's observation of international legal instruments are signs of its integration to the international community, the situation of asylum seekers reaching Hungary is especially influenced by the ongoing negotiations with the European Union. In fact, the goal of accession is the primary factor that shapes and will continue shape (even before full membership) the possibilities of asylum seekers in Hungary.

It must be emphasised that accession to the European Union should be interpreted broadly; the accession procedure is firmly embedded in integration to Western Europe. For example, Austria, before its accession to the EU in 1997, had already put political pressure on Hungary to sign a readmission agreement, which was later amended according to EU standards.⁷⁹ Thus, the transformation of the Hungarian asylum system is strongly influenced by Western Europe's expectations. As the following sub-chapters reveal, the most explicit negotiations and the bulk of definitive statements on asylum have been crystallised through EU channels.

⁷⁹ Council of the European Union, 1994.

III.A. Hungary towards full EU membership

Only estimates exist about the exact situation of Hungary' accession to the European Union. The accession preparations by all ministries are scheduled to be ready by 1 January 2002. Today, the media predicts an entry date sometime in 2003 or 2004 , while no exact date is specified by official EU sources. Michael Lake, EU Ambassador to Hungary, stated that Hungary may even enter the EU earlier than 2003, and that he would be quite surprised if the country were not a full member at the beginning of 2004.⁸⁰ He confirmed that the accession procedure is inevitable.⁸¹

„The lack of expansion would cost a lot more than the accession of new members... With the enlargement of the Union, the region where democracy, the rules of market economy and those of the law reign will also grow... With the expansion, the West gains stability, development and market. Therefore it pays for it.”

The implementation of EU standards and in a wider sense, co-operation with the European Union, is a factor that influences the date of acquiring full EU membership. The presently unfolding accession process must meet the criteria of the European Union, which “[u]rges the countries of Central and Eastern Europe to draw up stringent practical measures to help combat illegal immigration to the countries of the Union”.⁸² The accession procedure includes the implementation of various obligations. For example, “the Member States are wedded to the principle that the reaction to emergencies in countries close to the European

⁸⁰ Kocsi, 1999, p.4.

⁸¹ Trom, 1999, p. 44.

⁸² European Parliament, 1996, p. 141.

Union should, where circumstances so permit, be as far as possible the same.”⁸³ This statement clearly expresses the open intent of the EU that Hungary, like other states, should contribute to the realisation of EU migration and asylum policies.

The Hungarian legal system concerning asylum and migration affairs has already reached a level when it largely fulfils the requirements of the EU standards. The quality of the practical implementation of these legal standards is different, given the short period of associated status, during which the actual situation has been monitored and modified. The lack of adequate funds has also contributed to the slow nature of the necessary reform of administrative bodies dealing with asylum seekers.

It is important to underscore here that the ‘*acquis communautaire*’ do not necessarily meet international human rights principles; they represent the minimum standards.⁸⁴ Therefore, the national adoption of these standards is a step that may eventually lead to the fulfilment of international human rights obligations. This is also a reason why UNHCR urges Central European governments to accept the ‘*acquis*’ as an initial step, but also to accept more of the international standards.

III.B. Asylum seekers and refugees in the EU⁸⁵

In 1996, some 16.9 million foreigners lived in one of the Member States, including 5.5 million from other Member States. More specifically, 11.4 million non-EU citizens resided

⁸³ Council of the European Union, 1995

⁸⁴ For example, despite UNHCR’s firm viewpoint, persecution by non-state agents is still not regarded as a reason for protection in Germany and France although both countries align their asylum policies with EU standards.

⁸⁵ Data applied in this section in addition to other indicated sources: UNHCR Statistical Unit, 1999.

in the EU, including 4.1 million from other European states (mostly from Turkey and the former Yugoslavia), 3 million from Africa and a further 1.9 million from Asia in addition to those coming from the American continent, Australia and Oceania.⁸⁶ Today, the number of extra EU-foreigners includes 1,796,640 recognised refugees.⁸⁷

TABLE 3.1. NUMBER OF RECOGNISED REFUGEES AND NUMBER OF APPLICATIONS SUBMITTED IN THE MEMBER STATES AND IN HUNGARY IN 1998.

Country	No. of refugees	Applications
Austria	80,300	13,810
Belgium	36,100	21,960
Denmark	70,000	5,700
Finland	12,300	1,270
France	140,200	22,370
Germany	949,200	98,640
Greece	5,900	2,950
Hungary	5,400	7,118
Ireland	600	4,630
Italy	68,300	7,110
Luxembourg	700	1,710
Netherlands	131,800	45,220
Portugal	340	340
Spain	6,000	6,650
Sweden	178,800	12,840
United Kingdom	116,100	46,020
Total without Hungary	1,796,640	291,220

Source: UNHCR Refugee Statistics web site Table I.1. and Table V.I.

The above table shows explicitly, that Germany, France, the Netherlands, Sweden and the United Kingdom are the main host countries, where the country is attractive from the viewpoint of migration, and where the application has benefits. In these countries the legal circumstances and their strict implementation (e.g. concerning employment) put more pressure on refugees and migrants to apply for asylum. However, the table does not take into consideration the size of these countries, which evidently influences the number of

⁸⁶ Source: United Nations Commission on Population and development, 1997. in: Niessen, J., Mochel, F. (1999)

⁸⁷ Source: UNHCR Refugee Statistics website Table I.1.

applications.

III.B.1. Proportional aspects

Statistics from a different angle provides a more precise insight to the differences between the openness of states to asylum seekers. As the table below demonstrates, the EU as a whole received an asylum-seeker for every 1,276 inhabitants during 1998. Luxembourg received one asylum-seeker per 230 inhabitants, which is more than five times the European average, followed by the Netherlands with Germany further down in 7th place on the list. Britain, with 1,262 citizens per asylum seeker, is only slightly above the EU average, while France, Greece, Finland, Spain, Italy and Portugal, as well as Hungary, all below the EU average.

TABLE 3.2. NUMBER OF ASYLUM APPLICATIONS IN THE EU MEMBER STATES AND HUNGARY DURING 1998 AND 1999 COMPARED TO NATIONAL POPULATION.⁸⁸

Ranking	Applications		No. of inhabitants	Asylum applications per 1,000 inhabitants	
	1998	1999		1998	1999
1. Luxembourg	1,710	2,920	429,200	3.98	6.80
2. Belgium	21,960	35,780	10,213,800	2.15	3.50
3. Netherlands	45,220	39,300	15,760,200	2.87	2.49
4. Austria	13,810	20,130	8,082,800	1.71	2.49
5. Ireland	4,630	7,720	3,694,000	1.25	2.09
6. United Kingdom	46,020	91,390	59,122,600	1.01	1.55
8. Denmark	5,700	6,470	5,313,600	1.07	1.22
7. Sweden	12,840	11,230	8,854,300	1.45	1.27
9. Germany	98,640	95,330	82,037,000	1.20	1.16
10. Hungary	7,118	11,600	10,091,800	0.73	1.15
11. Finland	1,270	2,820	5,159,600	0.25	0.55
12. France	22,370	30,830	58,966,800	0.38	0.52
13. Spain	6,650	8,410	39,394,300	0.17	0.21
14. Greece	2,950	1,530	10,533,000	0.28	0.15
15. Portugal	340	310	9,979,500	0.03	0.03
Total without Hungary	297,920	354,170	317,540,700	0.94	1.12

Source: UNHCR Refugee Statistics website Table I.1.

The number of applications may easily vary from year to year, depending on sudden

⁸⁸ UNHCR Statistical Unit, 2000 Asylum Applications and total population in Europe in 1998 and 1999.

changes of the influx of asylum seekers and on changes in national policies on migration and asylum. However, the statistics on actual recognised refugees in a country show the real level of openness of the country towards those seeking protection. The position of the countries on the table below is somewhat different than in the previous one, where Sweden, Denmark and Germany rank higher. Here it is important to emphasize again, as it was stated in Chapter I. – *Refugees and Asylum seekers in Hungary*, applications may have different reasons depending on the what asylum and the procedure itself may offer in the different countries. While for EU countries most asylum applications can be regarded as a sign of determination to stay in that country, in the case of Hungary, an application is frequently no more than the only resort to avoid deportation.

TABLE 3.3. NUMBER AND RATIO OF RECOGNISED REFUGEES IN THE EU MEMBER STATES AND HUNGARY DURING 1998 COMPARED TO TOTAL NATIONAL POPULATION.⁸⁹

Country	No. of refugees	No. of inhabitants	Number of inhabitants per refugee (rounded)
Sweden	178,800	8,788,000	5,910
Denmark	70,000	5,223,000	74.61
Germany	949,200	81,594,000	206.83
Austria	80,300	8,018,000	100
Netherlands	131,800	15,482,000	837.54
Belgium	36,100	10,127,000	74.61
France	140,200	58,104,000	117.47
Finland	12,300	5,137,000	99.85
Luxembourg	700	400,000	500.250
United Kingdom	116,100	58,079,000	6,604.5
Italy	68,300	57,204,000	571.43
Greece	5,900	10,454,000	280.53
Ireland	600	3,546,000	417.64
Spain	6,000	39,627,000	1,871.48
Portugal	340	9,815,000	1,771.86
Total without Hungary	1,796,640	371,598,000	206.81 (EU average)
Hungary	5,400	10,106,000	414.44

Source: UNHCR Refugee Statistics website Table I.1

⁸⁹ UNHCR Statistical Unit, 1999, p. 8.

III.B.2. Rationale behind applications in different Member States

As Chapter I. – *Refugees and Asylum seekers in Hungary* already summarised, migration to different countries depends first of all on the wealth of a country and the accessibility of wealth, as well as on linguistic, political, historical, cultural and family ties. On these grounds, Great Britain has attracted nearly all migrants and asylum seekers from India, Pakistan and Bangladesh, while two thirds of Tunisians and nearly all Algerians living in Europe have opted for France. Two thirds of those leaving Yugoslavia, and nearly all ethnic Germans from the former Communist states, migrated to Germany.⁹⁰

Other considerations leading migrants to apply for asylum in certain countries are based on different grounds, primarily on the benefits received from the application and the refugee status. This includes such factors as legal stay and work, health care services and integration programmes. The limitations of this thesis do not permit extended research on statistics comparing the GDP of the individual member states and their respective social spending for asylum seekers and refugees, but it should be noted that this also greatly influences the figures presented above.

On the European level, the number of asylum seekers compared to migrants is extremely low in Italy, Spain and Portugal, given that penalties against illegal immigrants in these countries are not significant, and illegal employment is far less dangerous than in Germany, Denmark, the Netherlands or the UK. In the latter group of countries, there are a great number of migrants who apply, since the application is in part a prerequisite for social benefits, stabile employment and/or a temporary protection against return. This explains why the number of asylum applications and that of recognised refugees is so different in the Member States.

⁹⁰ Münz, 1998. p. 96.

These factors, i.e. cultural, economic, linguistic, etc. ties that attract migrants as well as the benefits of application will be considered later on in Chapter V. – *Proposals* when estimating the future number of asylum seekers in Hungary. The analysis of these factors will be especially significant when the post-accession period is in question, i.e. when Hungary's attraction to migrants will be similar to other EU countries as far as advantages of the full membership is concerned.

III.C. Migration and asylum policies in the EU⁹¹

The asylum policies that Hungary follows and which will be presented in detail in Chapter IV. - *The institution of asylum in Hungary*, largely depend on those of the European Union. Hungary is partly implementing the same measures, e.g. the conclusion of readmission agreement with countries on the Eastern borders, and partly is forced to modify its policies as EU expectations dictate, e.g. the holding of migrants in detention center-like facilities in order to avoid their further travel to the West. Formation of EU policies began long before Hungary had to face the phenomena of refugee flow and immigration. Member states of the European Union started to elaborate individual policies on migration-related issues in the 70's, to decrease migration for employment. From the mid-80's they started to work on joint agreements, in order to limit the admission of refugees and asylum seekers, and in the 90's against illegal migration and human trafficking. The latter period was also the time when Central and Eastern European countries applied for EU membership, and their involvement in protecting the EU from illegal migrants and in a fight against human struggling became integral part of the accession policies. During this period, the number of refugees recognised under the Geneva

⁹¹ Parts of these sub-chapter are based on the reasoning of the following edition: Niessen, J., Mochel, F., 1999.

Convention decreased, while persons given temporary protection or a simple permission to stay, as well as illegal immigrants, appeared in significantly greater numbers.

III.C.1. Co-ordination of joint policy

III.C.1.a. EU actions between 1991 and 1994

In 1991, not too long before Hungary's application for EU membership, the European Commission launched an initiative to harmonise migration policy at the European level. As migratory pressures increased, the Maastricht European Council work programme was initiated for the harmonisation of immigration and asylum policies.

The Edinburgh Summit, held in December 1992, was the first major effort for joint European action on migration, and adopted principles to control extra-Union migration. These principles include:⁹²

- The preservation and restoration of peace, and full respect for human rights and the rule of law, which could diminish migratory movements resulting from war and oppressive regimes.
- The protection and assistance of displaced people in the nearest safe area to their homes.
- The promotion of liberal trade and economic co-operation with countries of emigration, which could reduce economic motives for migration.
- Targeting development aid and job creation, and the alleviation of poverty.
- Efforts to combat illegal immigration.

⁹² List quoted from: Niessen, J., Mochel, F., 1999. p.13-14.

- The conclusion of bilateral or multilateral agreements with countries of origin or transit, to ensure that illegal immigrants were returned to their home countries.
- The assessment of home countries' practices in readmitting their nationals after they are expelled from the territories of the Member States
- The increase in co-operation in responding to the particular challenge of persons fleeing armed conflict and persecution in former Yugoslavia.

The observation of these declarations would have diminished the number of asylum seekers by building peace in refugee sending countries, and by blocking their physical access to apply for asylum. However "[t]he specific declarations of intent were hardly implemented, and the general ones were not laid down in clear programmes and action plans."⁹³

III.C.1.b. EU actions between 1994 and 1998

The European Commission elaborated a new, comprehensive approach to develop migration policy for the European Union in 1994.⁹⁴ The Commission defined three main areas of action:

- to address the root causes of migratory pressures
- immigration control
- integration and training of immigrants

A summary made about this approach in September 1998 by the Austrian presidency gave

⁹³ Austrian Presidency, 1998, Art. 4.

⁹⁴ European Parliament, 1994.

a very critical analysis of the situation of the unification:⁹⁵

As regards the extent to which this approach has been implemented, it can be ascertained that clearly visible and measurable real achievements have been made only in parts of the three areas....[T]he European Union has not really managed to influence ... the reality of migration in a manner that can be ascertained empirically. ... [t]he emigration from the main regions of origin [has not] decreased in the past five years (rather the opposite) The European Union's activities in the past few years have thus remained to a certain extent fragmentary.

III.C.1.c. The Austrian, German and French presidency

A very dynamic, but only partially accomplished initiative was that of Austria during its EU presidency, which covered the second half of 1998. It was the exact time, as it will be revealed in the next chapter, when Hungary, under the pressure of the presidency of the neighbouring Austria severed border protection, and asylum seekers staying in Border Guards Community shelters were denied the possibility to leave these facilities. In addition to lobbying for EU enlargement, this period was characterised by the goal of elaborating a common EU immigration policy. The rationale behind the reconsideration of the protection provided for refugees was a new interpretation of the Geneva Convention. The Geneva Convention, as the new consideration states, was elaborated to protect people fleeing from totalitarian regimes, during the era of the cold war. In today's world, people flee from inter-ethnic or inter-religious civil war and require a different sort of protection.

The Austrian government developed the following four major principles for restructuring

⁹⁵ Austrian Presidency, 1998, Art. 5. and 7.

the management of migration and asylum related issues.⁹⁶

- **Prevention of Migration** - The proposal asserts that it is possible for the EU to reduce migratory pressure by playing a role in preventing conflicts in other countries and by increasing development aid to those places from which people are fleeing for economic reasons.
- **Control of illegal immigration** - Reducing the number of migrants who enter the EU illegally, mostly by making border controls stricter, is deemed a necessity. This proposal includes improving the situation for legal immigrants. This would reward people for going through legal channels, and thus be an incentive against illegal entry.
- **Temporary asylum vs. permanent residence** - The proposal suggests offering temporary asylum to people who cannot live in their home country due to war or civil unrest. This is based on the assumption that many world conflicts are temporary situations and when resolved, these people can and should return home. This includes a proposal for programmes that help people re-integrate into their country of origin. Giving only temporary residence would theoretically open more spaces for future refugees.
- **Application process** - Lastly, the proposal suggests increasing the efficiency with which applications are processed. This would ease the situation for both the host country and the refugees. The long wait associated with asylum applications is a bureaucratic burden on the host country, but also puts an incredible level of stress on the applicants who can be left waiting for up to several years.

This policy also included measures to be taken against states that do not co-operate in the realisation of the proposed EU actions, as it states that, „[e]conomic aid will have to be

⁹⁶ List quoted from: Johnson, 1998, p.8.

made dependent on visa questions,... (as well as on) the willingness to provide economic co-operation on effective measures to reduce push factors.’⁹⁷ The Austrian proposals had no strong influence on the Action Plan of the European Union.⁹⁸ In fact it was seen as a major threat to a fair asylum system by most refugee-assisting NGOs and human rights conscious politicians.

The German Presidency during the first half of 1999 also showed considerations aiming at the relief of the EU from further asylum pressure. In a position paper, they advocated for joint efforts by the international community to ensure that refuge can be provided chiefly in the home region.

The French Presidency in 2000 elaborated also an ‘Action plan to improve the control of immigration’.⁹⁹ The project offered aims to improve the information exchange, early warning and response system and to organise a network of officers responsible for immigration matters in the countries of origin. This plan puts equally little emphasis on a multilevel approach, and rather concentrates on the simple sealing of the territories of EU Member States.

III.C.1.d. The Tampere meeting

Heads of states and governments of the EU held a two-day meeting in Tampere, Finland, in October 1999, in order to discuss uniform regulation of immigration matters, and to agree on joint measures for the creation of a joint European region of justice affairs, and on fighting international crime. Some proposals of the meeting clearly influence the asylum

⁹⁷ Austrian Presidency, 1998, Article 61.

⁹⁸ European Commission, 1998.

⁹⁹ French Presidency, 2000

policies of the EU today:

- The creation of a joint asylum policy with refugee sending countries such as Morocco, Afghanistan, Sri Lanka, and Iraq.
- Those countries received exceptionally great numbers of refugees should be provided financial support from the EU budget
- The integration process of foreigners should be speeded up, by enhancing their rights and by a fight against xenophobia
- Illegal migration should be diminished, partly by signing readmission agreements with countries of origin.

These focal points of the EU level migration and asylum policy clearly show where Hungary, similarly to other accession states must join in primarily to the migration policy forming dialogue. As it will be detailed in Chapter V. – *Proposals*, lobbying e.g. for compensation for welcoming refugees as a mean to protect the EU from migrants could be a thread to follow in negotiation talks.

III.C.2. Unification for restriction

The EU level policy making efforts reveal the continuous presence of a multilevel approach, which includes the development of the refugee sending countries and the integration of legally staying refugees/immigrants. At the same time, immigration control has always been the main mean of migration policy since the first efforts to create a joint European standpoint in the mid-1980's.¹⁰⁰ It was during this period when, “almost all industrialised states expressed the opinion that they were experiencing an ‘asylum crisis’,

¹⁰⁰ Quoted from: Niessen, J., Mochel, F., 1999. p. 69-70.

often overlooking the fact that the real crisis was to be found in the world's poorer regions."¹⁰¹

[T]he European Union and its Member States have narrowed considerably the meaning and the scope of migration management. It has come to mean restricting immigration and most of the measures taken aim to limit the number of immigrants, facilitate the return of rejected asylum seekers and undocumented or irregular migrants, strengthen control mechanisms, and assist neighbouring states in putting similar mechanisms in place. This type of management is almost exclusively based on national policy considerations, valid or less valid as the case may be.

Thus, European Union level efforts, despite the multilevel approach revealed by e.g. the Tampere meeting, have not shown major visible results as far as the whole of migration management is concerned. Other analysts similarly find that during the harmonisation process, Member States have adopted more and more restrictive measures to curb migration. These restrictions "lead to a fundamental crisis of the whole institution of asylum; a crisis leading to the downgrading of protection of refugees ... Soon there may be nowhere for a would-be refugee to turn"¹⁰² There are even signs of uncertainty about following previously set standards. For example, "European ministers ... argued that refugees should flee to countries neighbouring or close to their own, and yet when an exodus of peoples fleeing 'ethnic cleansing' in the former Yugoslavia occurred, many European nations imposed visa restrictions to prevent these asylum seekers from reaching their shores."¹⁰³ This was one of those measures that effected adversely other states, as

¹⁰¹ UNHCR, 1997, p. 185.

¹⁰² Phillips, 1997, p.3.

¹⁰³ Minority Rights Group, 1997, p. 8.

diverted refugee flows into other, non-EU territories. As for example Hungary applied no visa restrictions against the countries of former Yugoslavia, it had to welcome a large number of asylum seekers, and a great burden was thus put on the country without compensation.

The United Nations High Commissioner for Refugees, Sadako Ogata, similarly warned about the worsening situation of asylum in Europe stating that, "some decline concerning the respect for humanitarian principles and especially those of refugees can be witnesses in Europe."¹⁰⁴ She added that the growing control on immigration leads to the rejection of the principle of non-refoulement adopted by the democratic Europe during the Cold War. Consequently, those who genuinely need international protection become the victims of these measures.

III.C.3. Avoiding a multilevel approach

The apparent dominance of restrictive measures, by which policies were concentrated on keeping migrants and asylum seekers out of the EU, rather than facing the root causes of migration, and finding ways of reducing the need to move, can be explained by several factors. The social integration and the training of migrants, as a tool for supporting immigrants' capacity to gain wealth and then transfer financial assets and know-how home, and therefore contribute economic growth in their countries of origin, was one of the elements of a multilevel approach that received just limited support so far. The idea behind the importance of social integration is clear: Migrants care for their family members back at home, they invite them for short visits, who therefore can acquire new experience and knowledge. Those who return temporarily or permanently, transmit information on how to

¹⁰⁴ Ogata, 1998.

run societies more efficiently, and also establish trade contacts between the host countries and the countries of origin.

In an ideal world, well organised labour migration might lead to flows of worker remittances which would improve the national accounts of the sending country, and at the same time lead to investments which would improve productivity and infrastructure. Returnees would bring with themselves valuable skills and experience, which would support the development process.¹⁰⁵

At the same time, these initiatives for a multilevel approach have several pitfalls, since

[t]he real world is not like this. Much migration is irregular and leads to insecure and exploitative employment, which gives few benefits in resources to maintain their existing mode of production and lifestyle, rather than to precipitate change. Remittances and savings often go into consumption or low productivity service enterprises. The loss of skilled and active personnel can inhibit development, and many of the most skilled migrants never return.¹⁰⁶

Contributing to economic growth in refugee sending countries may also have adverse results. While economic growth decreases forced migration, it may increase voluntary migration, which may lead to the emigration of the skilled and the educated from the urban areas. Although studies on the relationship between socio-economic development and emigration do not clearly prove or deny this fact, policy makers cannot be certain about the real consequences of schemes such as the promotion of direct investment, free trade or the

¹⁰⁵ Castles, 1999, p. 16.

¹⁰⁶ Ibid.

provision of development aid.

This well explains why the implementation of a multilevel approach is a highly complex task, especially amongst an increasing xenophobic mentality in Europe. For politicians it would be difficult to explain the necessity of the required investment, which yields profit only on the long run, and without direct return to the investor country. Nevertheless, on the long run, the implementation of a multilevel approach, including the alleviation of the debt-burden of developing countries, the financing of construction of infrastructure for Third World regions, etc. is inevitable. Probably, only the full escalation of the international refugee crisis will be the ignition key that brings into motion the cooperation of the political systems of the developed world.

Latest developments concerning EU policies however, include a positive element, as Article 18 of the draft *Charter of Fundamental Rights of the European Union* posits a right to asylum thus:

The right to asylum shall be guaranteed with due respect for the rules of the Geneva Convention of 28 July 1951 and the Protocol of 31 January 1967 relating to the status of refugees and in accordance with the Treaty establishing the European Community.¹⁰⁷

It is uncertain whether this article of the Charter will considerably influence the migration policies of the Member States of the European Union. Nevertheless, it has drawn positive criticisms from otherwise critical NGOs, and shows openness towards moving further than the 'right to asylum' mentioned in the Universal Declaration of Human Rights, by ensuring

¹⁰⁷ <http://db.consilium.eu.int/dfdocs/EN/04422EN.pdf>

the provision of asylum, i.e. by underlying the obligation of states.

III.D. The 'acquis communautaire' and policies

Having discussed the main features of the EU level efforts to create policies for migration, the concrete legal instruments that reveal the common elements of the operation of the migration systems in EU countries must be discussed. The harmonisation of the legal systems in accession states such as Hungary is a prerequisite of membership, but the implementation leaves a room for policy makers to follow the interest of their own countries.

The 'acquis communautaire' is "a broad and vague notion implying the full set of rights, responsibilities, expectations, and obligations connected to community membership and the obligations of community membership that any new member would necessarily accept."¹⁰⁸ The acquis includes all the directives, decisions and regulations adopted by the European Community that have been elaborated since 1958, and aims to bring new member's economic, political, and legal systems into line with EU norms.

The idea of elaborating the acquis in relation to asylum was based on K.1 (1) of the Treaty of the European Union of 1992 (TEU) that defines the issue of asylum as a matter of common interest. All candidates, including Hungary, must accept the contents of the 'acquis', and, "accept, without reservations, the constitutive treaties and their political purposes, the decisions of any nature appeared from the entry into force of the treaties, as well as the options in the field of Communities developing and consolidation."¹⁰⁹ Following are the legally binding international instruments, as well as the non-binding

¹⁰⁸ Weber, Zysman, 1997, Part I. par. 9.

¹⁰⁹ European Commission, 1972, Art. 3.

Resolutions and Recommendations (which represent a political commitment by Member States), indicate how Associated States must develop the institution of asylum on a national level.

III.D.1. International obligations

The European Convention for the Protection of Human Rights and Fundamental Freedoms of 4 November 1950 (ECHR), the 1951 Geneva Convention and the 1967 New York protocol - as already presented in Chapter II. among the instruments adopted by Hungary - are the foremost, fundamental elements of the *acquis communautaire*.

III.D.2. Instruments adopted before the entry into force of the TEU in 1995

Since the *1957 Treaty of Rome* there has been a slow process to remove the internal borders of the European Union, and to elaborate a joint approach toward external borders, affecting asylum seekers and migrants. Some states favoured a faster realisation of the removal of internal borders.¹¹⁰ This effort lead to the signing of the *Schengen Agreement* in June 1985, the *Accord concerning the Gradual Abolition of the Checks at the Common Borders*, outside the framework of the European Community, which dealt with refugees within the larger area of immigration.¹¹¹

The *Schengen Convention* compensates for the lack of security resulting from the absence of border checks. This Convention was signed in June 1990,¹¹² and came into force in 1995.

¹¹⁰ Germany, France, the Benelux states, and later Italy, Spain, Portugal and Greece.

¹¹¹ Up to date, all EU countries, except for Ireland and the United Kingdom became members of the Schengen Convention.

¹¹² Denmark, the United Kingdom and Ireland have not signed the Convention, and have not lifted controls at the borders.

The Treaty focused on joint co-operation in the areas of external borders, police co-operation, extradition, narcotic drugs, fire-arms, and the movement of non-EU nationals, including refugees and asylum seekers. The Treaty stipulated that asylum seekers are to apply for asylum only in one Member State, and the Convention set the criteria for which country is responsible for hearing the asylum requests of those who request such protection.

The Single European Act adopted in 1987 by the European Community provided for the free internal movement of goods, persons, services and capital. The abolition of internal border check raised the issue of controlling the movement of third country nationals, especially that of a growing number of asylum seekers. Member States decided to refer these efforts to the area of Co-operation in the Fields of Justice and Home Affairs,¹¹³ taking the supervision out of the hands of the European Parliament and the European Court of Justice.

The first instrument to co-ordinate the asylum policies of all Member States, the *Dublin Convention*¹¹⁴, was signed in June 1990 and came into force in September 1997. The Dublin Convention replaced the asylum-related provisions of the Schengen Convention in 1997. The Convention determines the state responsible for examining an asylum on request, setting up the criteria for this responsibility, which includes such factors as family members with refugee status, valid resident or permit visa, and the country of entry to the EU. The Convention highlights the obligation of the country responsible for the entry of a

¹¹³ Treaty on European Union, Title IV.

¹¹⁴ Convention determining the state responsible for examining applications for asylum lodged in one of the Member States of the European Communities, signed in Dublin on 15 June 1990.

person to examine his/her asylum request.¹¹⁵ In addition, this first country is responsible for the expulsion of the same person if the request is not accepted, while the country responsible for the examination of applications has to take back asylum seekers, if they enter another Member State illegally.¹¹⁶ The Convention allows for the return of a foreigner to a non-EU third country by a Member State, to be performed according to this state's legal regulations.

In addition to the Schengen and Dublin Agreements, several other resolutions - also parts of the *acquis communautaire* - were adopted by the Committee of the European Union before 1995. The '*Resolution on manifestly unfounded applications for asylum*'¹¹⁷ gave way to an accelerated procedure, if authorities find that '[t]here is clearly no substance to the applicant's claim to fear persecution in his own country; or the claim is based on deliberate deception or is an abuse of asylum procedures.'"(Article 1.) The '*Resolution on a harmonised approach to questions concerning host third countries*'¹¹⁸ enables authorities not to examine applications at all if the applicant came through a "safe third country", or a country that is party to the Geneva Convention and where the asylum applicant would not be exposed to torture or inhuman or degrading treatment. The 'safe third country' principle is highly debated, as it is not fully compatible with the Geneva Convention, which obliges states to provide protection for all those asylum seekers who meet its requirements. The 'safe third country' principle influences significantly the number of asylum seekers in Central European countries including Hungary. Readmission agreements facilitate the

¹¹⁵ Schengen Agreement Art. 30, Dublin Convention Art. 5.

¹¹⁶ Schengen Agreement Art. 33, Dublin Convention Art. 10.

¹¹⁷ London 30.11. and 01.12.1992

¹¹⁸ London 30.11. and 01.12.1992

application of this principle, and asylum seekers are returned to Hungary especially from Austria, thus Hungarian authorities need to deal with their application, as it will be detailed in the next chapter – *The institution of asylum in Hungary*.

The '*Conclusions on countries in which there is generally no serious risk of persecution*'¹¹⁹ enlists the criteria according to which national lists may be drawn up to define countries with no serious risk of persecution. Asylum seekers from these countries may apply for asylum, but Member States may opt to treat these applications with an accelerated procedure as manifestly unfounded applications for asylum.

III.D.3. Instruments adopted after the entry into force of the TEU in 1995

The *Single European Act of 1986* focused on the free movement of persons, and the *Maastricht Treaty*, the *Treaty on the European Union (TEU) of 1992*, established the co-operation of states on an intergovernmental level, to elaborate, *inter alia*, a common asylum and migration policy (Chapter VI. Art. K1-K9). This Treaty included asylum and migration policy under the „Third Pillar“, i.e. the field of justice and home affairs. Co-operation in home affairs includes the following areas: asylum, external borders, immigration, organised crime and corruption, drugs, terrorism, police co-operation and customs duties co-operation. Co-operation in the area of Justice affairs includes unification of efforts in civil and penal law affairs, the financing of Community Programmes, human rights issues and foreign affairs. The inter-governmental structure of the Maastricht Treaty was a form of compromise between those Member States that wished to co-ordinate these affairs under the First Pillar, and those states who wished to reserve their sovereignty concerning this matter.

¹¹⁹ London 30.11. and 01.12.1992

After the TEU entered into force, the European Council adopted a priority activity plan and a special working plan within which another series of instruments were approved. The procedures of the individual countries were left intact. The '*Resolution on minimum guarantees for asylum procedures*'¹²⁰ was elaborated on the general rights of asylum-seekers during the examination procedures, the appeal and revision of their application, manifestly unfounded asylum requests, applications at the borders, as well as on unaccompanied minors and women. Neither this Resolution nor other efforts have led to a standard EU procedure; 'Member States' asylum procedures and policies continue to vary, producing different decisions with regard to asylum applications of similar factual content.'¹²¹

Other Resolutions were approved to stabilise the regime of temporary protection. The '*Council Resolution on burden-sharing with regard to the admission and residence of displaced persons on a temporary basis*'¹²² emphasised that Member States should admit persons fleeing armed conflicts of civil wars or similar situations that suddenly result in major population movements and require prompt action. This resolution enables the Council to adopt decisions on harmonised action to prevent a mass influx to one of the Member states and the burden-sharing of welcoming these people. The '*Decision on an alert and emergency procedure for burden-sharing with regard to the admission and residence of displaced persons on a temporary basis*'¹²³ is a supplement to the previous Resolution and sets up emergency procedure for crisis situations.

¹²⁰ Council of the European Union, 1995a.

¹²¹ ECRE, 1999, Art. 38.

¹²² Council of the European Union, 1995b, p.1-3.

¹²³ Council of the European Union, 1996a.

The '*Joint Position of 4 March 1996 on the harmonised application of the definition of the term 'refugee' in Article 1 of the Geneva Convention relating to the status of refugees*'¹²⁴ focuses on the determination of refugee status, the establishment of evidence required for granting refugee status, the definition of persecution, the refugee *sur place*, conscientious objection and the cessation of refugee status.

The above instruments well represent the efforts of EU Member States to control effectively the flow of asylum seekers into their territories. These instruments provide the first steps towards a unified European approach to deal with migrants and refugees. As Chapter IV. – *The institution of asylum in Hungary* reveals, the *acquis* has had an enormous influence on the present system of asylum in Hungary, by setting up the standards for the modification for its legal structure as an accession state, and in very concrete dimensions - by not letting migrants to leave Hungary and enter the EU, thus making Hungary deal with increasing number of migrants staying on its territories. The following sub-chapters discuss how these instruments together with other mechanisms narrow today the possibilities of potential and actual asylum seekers. These methods have been implemented by Hungary as well, and their impact will be detailed in Chapter IV. – *The institution of Asylum in Hungary*.

III.D.4. Limitations on access to asylum

One of the main current concerns on the institution of asylum is the physical accessibility of the potential host countries. "The Universal Declaration of Human Rights proclaims the right of everyone to seek and enjoy asylum. The right however is devoid of any meaning if

¹²⁴ Council of the European Union, 1996b.

there is nowhere for someone to go.”¹²⁵ It has to be mentioned here, that the Universal Declaration is not a binding instrument, it has a moral power to which states adhere to. The fulfillment of the above mentioned right does need a country to go to, but it still does not oblige states to open their borders for those who wish to apply for asylum. A set of measures have been institutionalised in the Dublin and Schengen conventions and applied to limit the arrival of potential asylum seekers.

III.D.4.a. Visa requirements

Restrictive measures on visa requirements on the EU level began to appear from the mid-80's. For example, from 1985 on, only those people from the Near East, Middle East and South East Asia could transit through the German Democratic Republic who had a valid entry visa to Denmark or Sweden. This restrictive trend continued; for example, in 1995, UK applied visa restrictions to 85 countries, the majority being on countries of origin for migrants.¹²⁶

A 1995 Council Regulation determined those countries whose nationals are required to have a visa to cross the external borders of the EU.¹²⁷ The list included countries where human rights are systematically violated, and therefore countries from which potential Geneva Convention refugees would potentially arrive from. Despite repeated requests of UNHCR and human rights NGOs, the present EU list [April 1999] of 101 countries includes several countries where civil wars and/or the widespread violation of human rights force many to seek refuge somewhere. Table I.1. presents the 13 countries that sent more

¹²⁵ Baneke, 1999, p.2.

¹²⁶ Source: Minority Rights Group, 1997, p. 19.

¹²⁷ Council of the European Union, 1995c.

than 10,000 asylum seekers abroad in 1998.¹²⁸ These countries were: Afghanistan, Bosnia-Herzegovina, China, Croatia, the Democratic Republic of Congo, Iran, Iraq, Rwanda, Somalia, Sri Lanka, Sudan, Turkey, and the Federal Republic of Yugoslavia. Out of these countries, only Bosnia-Herzegovina and Croatia were not on the common list, but EU countries had the option to individually determine visa requirements for these countries, as well as to all third countries not on the aforementioned list.

The outcome is clear for potential asylum seekers. "Generally visas are not available to persons in the category of refugee or asylum seeker, thus persons fleeing persecution have had to resort to deception to secure a tourist, student or other visa and/or to obtain the services of an 'agent' to assist them to enter Europe."¹²⁹ For example, about half of all new asylum seekers in Germany were smuggled in by traffickers in 1996.¹³⁰ Those who are not able to leave their countries due to the impossibility of acquiring a visa, find themselves stranded in a country where their fear of persecution may easily become a reality.

III.D.4.b. Carriers' liability

In addition to visa requirements, restrictions such as the fining of air-companies that transport would-be asylum seekers without valid travel documents, also limits the access to asylum. On the basis of Articles 26 and 27 of the Schengen Convention, which became part of the *acquis* under the Treaty of Amsterdam, Member States may use this mechanism to keep potential asylum seekers at bay. EU governments already send officers to check passengers before the intended travel, for example in the form of 'gate checks' at airports.

¹²⁸ This is obviously not the number of refugees but those who signed up to a formal refugee procedure.

¹²⁹ Berkowitz, 1997, p. 42.

¹³⁰ Migration News Sheet, 1997, p. 8.

During these checks, only the validity of the documents needed for legal travel are monitored, thus officials do not accept asylum requests and do not assist those who need to flee. Therefore, asylum seekers do not even have an opportunity to launch their application, as border controls are 'exported' to their countries of origin.

States send immigration officers to countries where they plan to reduce the number of arrivals as another measure to externalise immigration control. These officers co-operate with airlines staff, and may even check and control travel documents themselves. Since the consideration of international human rights regulations are not added to this procedure, the potential travel or flight of those in need of international protection is highly in danger.

In the Netherlands, an additional measure is implemented against the actual arrival of undocumented foreigners. Border guards at the airport pre-screen those arriving at the entrance of the aeroplane. Those without the proper documents are not even allowed to leave the aeroplane.¹³¹

III.D.4.c. International zones

The practice of creating international zones within the territory of Member States – similar to the international zone at Ferihegy Airport of Budapest - has also been established. Despite the ruling of the European Court of Human Rights, this practice still exists. At these zones, migrants are considered to be outside the territory of the European Union for various administrative and jurisdictional purposes.

III.D.4.d. Deterrence measures

The obstacles faced by asylum seekers do have an impact on the numbers of applications, and, in a wider sense, on the number of immigrants. The Dublin Convention does not

¹³¹ Source: Határőr, 24/1999, p.18.

provide for the socio-economic rights of asylum seekers waiting for a decision; and therefore they are frequently forced to reside in poor or inhuman circumstances. Several Member States limit the freedom of residence, provide no social security payments, and/or deny access to education and health-care (except in emergencies). The detention and continued accommodation of such people in prison-like circumstances also has the same negative influence.

III.D.4.e. Physical obstruction of entry

The practice of turning people back from borders without adequate determination procedures also exists. Border guards or police may send people back from borders and ports, or patrol seas and in order to turn back ships carrying migrants to their countries of origin. A recent example of this are the Albanian boat people turned away from the shores of Southern Italy. Furthermore, countries on the migration route, such as Hungary, are put under pressure to close the borders from potential asylum seekers.

III.D.4.f. Internalisation and containment

In addition to the above measures, Western European states have elaborated a number of new principles, mainly in reaction to the latest civil war in Yugoslavia. First of all, the principle internalisation, i.e. the keeping of refugees within their area of origin, was applied. In Bosnia Herzegovina, 'safe havens' were created, to keep people close to their homes, within the protection of the international community. Second, if internalisation proved to be impossible, containment was promoted, i.e. the keeping of refugees within the territory of the former Yugoslavia. For example, during the Kosovo crisis, the Foreign Ministers of the EU decided to pay a sum of 270 million USD to stabilise the situation of Kosovars in Macedonia, Montenegro and Albania, emphasising that refugees should remain in the region. Third, the principle of temporary protection was elaborated (see

below.)

III.D.4.g. Lack of protection for women

Women, especially those travelling alone are especially vulnerable in the context of international migration, even though many of them have very justified reasons to apply for asylum. Their situation is not unique to the European Union, but is similar in other host countries as well. Research on international migration tended to be 'gender blind' until the late 80's, since the model of temporary migration was planned and organised by state policies in West Europe¹³².

Gender sensitive procedures were lacking, e.g. the proper gathering of evidence on sexual violence, the respect of the right for women to be interviewed by a woman with a female interpreter. The lack of ensuring the rights enlisted in the ECHR, e.g. the lack of protection for women against degrading treatment, is against its Article 14, which demands the enjoyment of these rights without discrimination on the grounds of sex as well.

Trafficking of women has been on the rise, especially from Eastern and Central European after the political transition. Government action has been limited against this phenomena since then.¹³³ The lack of action is against the Convention on the Elimination of all Forms of Discrimination against Women, which states that 'States Parties shall take all appropriate measures,.. to suppress all forms of traffic in women and exploitation of prostitution of women.'¹³⁴ Moreover, a research by the Global Survival Network showed

¹³² Campani, 1995, p. 546.

¹³³ Topic discussed by participants on 25 May in Den Haag, in a conference on migration organised by the International Society for Development

¹³⁴ Article 6.

that "government initiatives against trafficking in many Western European states often have an adverse effect on female victims [since] tighter immigration regulations increase the reliance of many women on apparently legitimate organisations that promise to help with arranging entry visas and passports to enter Western Europe...."¹³⁵

Formerly, policies intended to provide the economy with a temporary and flexible labour force, by attracting nearly exclusively men. "Women and children were supposed to stay in their country of origin, but if they did come, the women [and the children] were to follow their men."¹³⁶ In Western Europe, the number of female immigrants, due partly to family reunification and partly to changes in the labour market, has nearly reached the number of male immigrants by 1992.¹³⁷ These trends already describe the situation of immigration in Hungary, which draw the attention to the importance of a gender-sensitive control of asylum issues.

III.D.4.h. Family unification

Various international legal instruments ensure the right to family life and unity. However, respect for this right has been declining in practice during the last ten years. Many third country nationals have to go through long procedures with no guaranteed success in the end. Art. 4. of the Dublin Convention provides for the reunification of family members if at least one of them is recognised as a refugee under the Geneva Convention. On these grounds, if family members receive any form of protection other than the Geneva status, the unification is not possible. Furthermore, Article 4 arranges for the reunification with

¹³⁵ Forced Migration Monitor, 1997, p. 1.

¹³⁶ Campani, Ibid.

¹³⁷ Campani, Ibid. p. 547.

spouses and of parents with their unmarried children under eighteen, but does not mention other family members. This arrangement is not fully in line with international standards that demand the respect of family life, e.g. with Art 8. of the ECHR, which demand that '[e]veryone has the rights to respect for his private and family life, his home and his correspondence'.

III.D.4.i. “Safe third country” practice

If potential asylum seekers succeed in reaching a country despite the above-mentioned obstacles, it is still possible to block them from applying for asylum. One possibility is the application of the “safe third country” principle, which has grown to be one of the most important and integrated factors of today’s asylum procedures. This principle enables authorities to deny access to a substantial refugee status determination, stating that the asylum seeker already could have found protection in the country where s/he previously stayed. The principle expresses the fear of the main host countries from the phenomenon of ‘asylum shopping’, i.e. the search by migrants for countries with the best prospects of future settlement and higher standards of living.

The main negative aspect of this practice is the lack of control on whether the countries where potential asylum seekers are returned to offer access to fair asylum procedure. As these ‘safe’ third countries may equally return people to other countries, there is a danger that the migrant finally reaches a country where s/he has to face inhuman or degrading treatment. In other words, the safe third country principle, as applied today, offers no protection against *refoulement* for migrants.

III.D.5. Limitations on the right to asylum

Those asylum seekers who do succeed in reaching the European Union face a more strict

determination procedure than ever before. If they are allowed to apply for asylum, they may face „accelerated asylum procedures, a substantial curtailment of appeal rights and an increasingly restrictive interpretation and application of Article 1 of the Geneva Convention.”¹³⁸

III.D.5.a. Narrow interpretation of the Geneva Convention

EU efforts have been concentrated on a common and narrowing interpretation of the 1951 Geneva Convention:¹³⁹

States did not dare renege on the Convention for fear of an uproar from the organised sectors of civil society and international bodies. The chosen strategy was thus to clip its wings and reduce its scope as much as possible through intergovernmental agreements and a battery of EU recommendations and conclusions.

For example, the EU *Joint Position on the Harmonised Application of the Definition of the term ‘Refugee’ in Article 1 of the Geneva Convention*¹⁴⁰ does not admit that persecution by non-state agents may amount to a well-founded claim for asylum. The promotion of the internal flight alternative means that lack of state protection may not be referred to if the asylum seeker has a fear only in a certain area of his or her country of origin.

III.D.5.b. Safe country of origin

Individual member states apply a list of safe countries, i.e. of those countries where human rights violations are rare. The general risk or persecution, previous numbers of refugees and recognition rates, the existence of democratic institutions, reports on the respect of

¹³⁸ Baneke, 1999, p. 3.

¹³⁹ UNHCR, 1997, part. 5.

¹⁴⁰ Council of the European Union, 1996b

human rights, and the stability of the country are examined and analysed before declaring a country safe. The objective of this practice is to decrease the pressure on competent authorities by establishing a harmonised approach to applications for asylum from countries whose citizens' present clearly unfounded applications on a high proportion. It is up to the individual Member States to decide which countries they consider safe. These 'white lists' on safe countries of origin do not exclude the risk of ignoring the individual character of fear and flight, by denying the access to genuine individual asylum proceedings.

III.D.5.c. Manifestly unfounded claims

The asylum procedures related to manifestly unfounded claims are to process applications that clearly lack a solid basis, but still keep certain procedural safeguards. The UNHCR Executive Committee declared in 1983, that „national procedures for the determination of refugee status may usefully include special provision for dealing in an expeditious manner with application which are considered to be so obviously without foundation as not to merit full examination at every level of the procedure. Such applications have been termed either „clearly abusive” or „manifestly unfounded” and are to be defined as those which are flagrantly fraudulent or not related to the criteria for the granting of refugee status laid down in the 1951 United Nations Convention relating to the Status of Refugees nor to any other criteria justifying the granting of asylum.”¹⁴¹ The Resolution enables states to return asylum seekers before admission to their territories if their application is manifestly unfounded.

¹⁴¹ UNHCR Executive Committee, 1983, section (d).

III.D.5.d. Temporary protection

According to the principle of temporary protection, immigrants may stay in the host country only until the reasons for residing outside the country of origin are justifiable. With these measures governments have been trying to avoid the burdens of the arrival and/or the permanent settlement of refugees. This is also used to avoid the creation of a 'pull effect' by admitting asylum seekers and creating a welcoming environment for them, which would in turn attract more migrants.

III.D.5.e. Expulsion without appeal

Theoretically, expulsion is a clear outcome of illegal stay in any EU country. The legal conditions enumerated in the *acquis communautaire* are strict as neither the 1992 Resolution on Manifestly Unfounded Applications for Asylum, nor the 1995 Resolution on Minimum Guarantees for Asylum Procedures, provide for the suspensive effect of appeal.¹⁴² Therefore rejected asylum seekers may be expelled right after the first instance administrative decision.

III.D.6. Effective asylum: social services and integration

The value of asylum depends on the quality of services a society provides for asylum seekers and refugees. This is well shown by the example of Hungary, where a fair access to social benefits, to employment, health care and education needs can be achieved only when enormous administrative efforts are made by the refugee or by the supporting social workers.¹⁴³ The non-existence or the problematic accessibility of social services decreases

¹⁴² This is against the conviction of UNHCR or the European Council on Refugees and Exiles claiming that the suspensive effect makes the appeal meaningful.

¹⁴³ Experience of the social workers of Menedék – Hungarian Association for Migrants.

the value of the refugee status.

The Geneva Convention includes a substantive chapter on the welfare of recognised refugees, which provides for their access to housing, public education and social security.¹⁴⁴ There are no joint EU policies on these services; Member States individually decide on the practical, social aspects of asylum they provide. Policies of Member States depend on the individual attitudes towards diversity and immigration, on the countries' approach to welfare and social protection, and on the distribution of roles of social protection between governmental and non-governmental bodies.¹⁴⁵ In general, while the provisions of the Geneva Convention provide some protection for recognised refugees, asylum seekers and those under subsidiary forms of protection have no legal reference point to claim social benefits under international refugee law.

III.D.6.a. The Nordic model

Although there is no unified EU level policy on integration, there are certain models that may well outline the future of refugee integration policies in Hungary.¹⁴⁶ In the Nordic model (especially Denmark, the Netherlands, Finland and Sweden), programmes funded by the government are offered to refugees during the initial phase of integration. These programmes include housing allocation, financial assistance, language courses, vocational training, and psycho-social counselling. Local authorities play a central role in launching these programmes. These countries do meet to certain degree the welfare requirements of the Geneva Convention. However, even in these countries, e.g. in the Netherlands there is

¹⁴⁴ Chapter IV. Articles 20-24.

¹⁴⁵ Sianni, 1999.

¹⁴⁶ Reasoning based on: Sianni, Ibid.

no protection of any kind for rejected asylum seekers, and these people may face inhuman or degrading treatment due to the complete ignorance of their presence by authorities.

The United Kingdom offers no systematic policy on refugee settlement. There, local governments concentrate on ensuring the same services for refugees as for any other people, while assistance from the government does not relate to the number of refugees in their area. Refugee agencies and refugee community organisations provide services, which constitute the central element of refugee support in the UK.

Similarly, there are no special integration services in Germany for refugees in general, only for returnees from the East European region. Long term migrants, mostly Turks, Moroccans, Greeks, etc., receive integration support in the form of language courses and vocational education concentrating on language, technical and skills development. Social counselling is also available for foreign workers and their families, through welfare NGOs. The majority of people who are provided some kind of refugee protection in Germany do not receive full refugee status, and therefore have no access to specialised services.

III.D.6.b. The mixed model

Austria and France apply partial integration programmes, through which Convention refugees may participate in special programmes. In France, refugees have access to a wider context of programmes, such as social exclusion, public safety, unemployment and urban diversity. Limited services are available exclusively for Convention refugees in reception centres, such as social support and language courses, which are financed by the government and managed by NGOs. These services are available for six months. After recognition, refugees have access to housing benefits, training and vocational education.

Refugees in Austria have access to several types of integration services, such as language and Austrian society orientation programmes, basic training and benefits provided by an

independent body with government and UNHCR support. Refugees here have no right to funding, therefore services depend on current budget priorities.

III.D.6.c. The southern model

In Southern Europe, namely in Portugal, Spain, Italy and Greece, there are basically no state run or state funded services for refugees, and the welfare requirements of the Geneva Convention are hardly met. It is usually the NGO and the church sector that undertakes the provision of services. One of the main reasons for the low quality of such support is the limited presence of welfare services for the society as a whole. Refugees in this region need to seek their own resources, frequently in the black or underground economy. The southern model is especially against the principle of right to life¹⁴⁷, when the lack of state protection endangers someone's physical existence.

III.E. Current developments and future trends

III.E.1. The Amsterdam Treaty

In May 1999, the Member States adopted a new Treaty for Europe, the Amsterdam Treaty, which revised the Convention on the European Union.¹⁴⁸ One of the objectives of this Treaty is the creation of a new area of freedom, security and justice, supported partly by eliminating the last obstacles in the freedom of movement, and by creating a common asylum and migration policy. The Treaty obliges Member States to develop various instruments to influence the lives of migrants, asylum seekers, refugees and third country nationals within and outside the borders of the Union, to arrange for the elimination of

¹⁴⁷ Article 2 of the ECHR, and Art. 6.1. of the ICCPR.

¹⁴⁸ The Amsterdam Treaty was the final document of the Intergovernmental Conference of 1997 held in Amsterdam.

control of EU citizens and third country nationals at internal borders, and to detail the procedures for controlling the transit of external borders.¹⁴⁹ These measures are to be implemented within five years, i.e. by 2004, and they will have to be implemented also by applicant states including Hungary, before the date of its full accession.

The Treaty transfers the issues of asylum, migration and visa issues from an intergovernmental level to a supranational level, i.e. from the Third Pillar to the First Pillar, and it brings the Schengen requirements into the framework of the European Union as a whole. All Member States will incorporate the Schengen principles into the EC Treaty and the Treaty on the European Union. Only Ireland and the United Kingdom have opted out from these measures.

During the five years of harmonisation, the European Commission and the Member States will have the right to initiate policies on migration and asylum related issues. Furthermore, for an undetermined length of time or until a decision by the European Council, decisions will be made on a unanimous voting basis. The European Parliament's right of consultation will be more reduced than elsewhere in the First Pillar, and the European Court of Justice will have no power to issue rulings over lower level national courts. This means that the decision-making procedures do not exclude a tendency to converge toward the lowest common denominator policies. This may further weaken the fulfillment of international legal obligations by the Member states.

After the entry into force of this treaty on 1 May 1999, specific measures must be adopted within 5 years regarding EU external border controls, asylum and immigration, and the measures will be legally binding. The Treaty's entry into force has no immediate effect

¹⁴⁹ Article 73k - Article 63 of the consolidated version of the Treaty Establishing the European Community

therefore, but it already influences the policy and practice of the Accession States in Central Europe.

The Treaty includes great possibilities, according to some British NGOs. It offers, for example, “opportunities to design EU policies... which go far beyond the restrictive interpretation of the concept of migration management, which act forcefully on integration and anti-racism, and which prioritise the protection of human rights and the socio-economic countries of origin.”¹⁵⁰ At the same time it has its negative potential as well.

In its Action Plan¹⁵¹, the European Commission has set up a schedule for discussing the major elements of the institution of asylum in the European Union within the framework of the Amsterdam Treaty. The topics of temporary protection and burden-sharing are imminent priorities, while the revision of the Dublin Convention on determining the state responsible for the asylum procedure, as well as the issues of asylum procedures, the reception of asylum seekers and carriers’ liability are to be discussed within 2 years. The topics of a unified definition of a refugee and of subsidiary/complementary protection are to be dealt with within 5 years. The re-definition of a refugee may bring a negative result, as long as it narrows the Geneva Convention according to the preferences of the EU. The time-schedule illustrates the EU’s efforts to create a more unified system, which will also form part of the *acquis communautaire*.

III.E.2. Future trends in the *acquis communautaire*

The long-term solution to control undesired migration must face the root causes of push factors. Despite present EU practices to curb immigration, mostly through stricter

¹⁵⁰ ECRE, MPG, 1999. p. 4.

¹⁵¹ Council of the European Union. (1999), p. 1-15.

immigration control, policy trends reveal the return to the principles of the early 90's introduced above.

III.E.2.a. Changes in the refugee definition

As the Austrian considerations suggested, a new and more harmonised definition of a refugee is needed to provide a more unified foundation for legislation dealing with asylum seekers. The 1951 Geneva Convention will likely be complemented by a new definition, as has already been proposed in the '*Resolution on the harmonisation of forms of protection complementing refugee status in the European Union.*'¹⁵² The resolution proposes the following supplementary refugee definition:

- a) persons who have fled their country, and/or who are unable or unwilling to return there because their lives, safety or freedom are threatened by generalised violence, foreign aggression, internal conflicts, massive violation of human rights or other circumstances which have seriously disturbed public order; and
- b) persons who have fled their country and/or who are unwilling to return there owing to a well-founded fear of being tortured or of being subjected to inhuman and degrading punishment, or violations of other fundamental rights.

The ongoing debates on the rejection of claims in, for example, Germany and France, which are based on a persecution by a non-state agent, reveal trends to more narrowly interpret the Geneva Convention. Stricter interpretation will be further modified by efforts to find definitions that fit the real nature of the push factors of international migration. States will probably not risk a complete ignoring of the 1951 Convention and thus initiate a new era in international refugee protection, but rather find supplementary definitions that

¹⁵² February 1999

cover those not protected under its mandate.

III.E.2.b. Separate country procedures

Member States of the European Union do not seem to feel they are under immediate pressure to expedite a unified European asylum procedure. The inclination is more towards maintaining control over the number of asylum seekers and migrants who come into the country, on the recognition procedure, and also on the expulsions.

III.E.2.c. Burden sharing

Major host countries are especially keen on burden sharing in order to avoid the influx of a disproportionate number of asylum seekers. Today, burden sharing remains extremely uneven, which is can be illustrate by the example of the distribution of asylum seekers from Bosnia, two thirds of which are in Germany. A swift reaction to emergency cases is still not operational, despite the *Council Resolution on an alert and emergency procedure for burden-sharing with regard to the admission and residence of displaced persons on a temporary basis*.¹⁵³ The lack of even a very basic scheme to alleviate the crisis of the large influx of ethnic-Albanians from Kosovo certainly showed the lack of organisation and communication capacities needed to implement this Council Resolution. One reason for the lack of co-ordination in this field is due to the failure of the *Council Resolution on burden-sharing with regard to the admission and residence of displaced persons on a temporary basis*. This Resolution was created in 1995¹⁵⁴ to specify the criteria (GDP, number of population, etc.) according to which the different Member States should welcome refugees in case of mass population movements. However, this resolution failed

¹⁵³ Council of the European Union, 1996a

¹⁵⁴ Council of the European Union, 1995b.

due to the differences between the calculation of states, e.g. in the case of the Kosovo crisis, when some states unilaterally diminished their refugee-hosting quota on grounds of their greater participation in warfare activities.

Burden sharing will continue to be a central factor in migration and asylum issues, although the concept will include not only the reception of migrants, but also the sending of military troops or financial aid to prevent a mass exodus to the EU. Burden sharing will include methods through which refugees can be kept close to their countries of origin (a form of international burden sharing) and measures to keep them in safe third countries, such as Hungary, before distributing them equally in Member States.

III.E.2.d. Subsidiary forms of protection

The major form of refugee protection will be provided under different forms of subsidiary (non-Convention) status, despite the fact that presently there are no unified subsidiary refugee definitions on the European level. Conditions in countries of origin will be closely monitored, and temporarily protected persons will be returned when the conditions that forced them to leave no longer exist. This will be facilitated by European Union-wide computer databases that will help to identify and locate the protected persons in the long run.

III.E.2.e. International aid programmes and co-operation

The roots of migratory pressures obviously cannot be adequately treated simply through strict border controls. International experience also demonstrates the necessity of a multilevel approach:

Indeed, American experience shows us that, to make the borders of the Rio Grande invincible, severe laws, heavy fines for employers taking on illegal

workers and borders guarded night and day with sophisticated surveillance systems were just not enough ... A commonly used instrument is the quota system, but in Europe this does not seem to be sufficient in itself. According to Böhning (1991)¹⁵⁵, a second instrument could be 'project-tied migration' - admission to a new country to undertake a specific assignment of employment - and a third [instrument], 'migration for training'.¹⁵⁶

The long-term solution must focus on aid programmes that stabilise actual and potential refugee sending countries. Part of such packages could be the alleviation of the debt burden of these countries, the signing of bilateral or multilateral trade accords, as well as the training of professionals for state administration or consulting services for the development of the telecommunication infrastructure, etc. Such co-operation already exists in various forms, such as the Euro-Mediterranean Agreements, the Lomé Treaties signed with the ACP countries, or the Phare programme for the Central European Region. This co-operation will inevitably be expanded to actual or potential refugee sending regions and countries.

Another development that gives insight to the direction of concrete measures was the formation of the High Level Working Group on Asylum and Migration by the Council on 7-8 December 1998. The objective of the Working Group was to submit action plans for the implementation of an integrated cross-pillar approach in relation to the major countries of origin and transit of asylum seekers and migrants.¹⁵⁷ The future activities of the Working Group will include the analysis of the causes of influx, and of the possibilities for

¹⁵⁵ Böhning, 1991, '

¹⁵⁶ Golini, 1993. p. 81.

¹⁵⁷ COREPER, 1999.

strengthening the common strategy for development between the EC and its Member States and the country concerned to prevent economic migration. The Working Group will identify the needs for humanitarian aid and rehabilitation assistance, provide proposals for the deepening of political/diplomatic consultations, establish the inclusion of re-admission clauses in association agreements, and maintain and improve reception and protection in the region or within the countries of origin. In addition, methods of combating human smuggling and encouraging voluntary repatriation will be elaborated. More substantial ways of co-operating with UNHCR, intergovernmental, governmental and non-governmental organisations will also be explored. The objectives of the Working Group clearly express what the focal points of international asylum and migration policy will be in the future.

Finally, countries on the borders will be given special attention as the last step, transit zones before entering the European Union. Poland, the Czech Republic, Hungary and Slovenia will be in the forefront of efforts to stop migration at the Schengen borders with the help of the countries on the other side: Austria and Germany.

III.E.2.f. Swifter reaction to emergency cases

Sudden outbreaks of war and the resulting exodus of refugees in the surrounding region and to the European Union have alarming effects. Partly on the grounds of the 'Kosovo experience', more effective measures will be elaborated in order to respond faster to emergency cases.

III.E.2.g. More efficient and strict procedures

Present trends suggest that procedures will more accelerated in the future. Procedures that may take even a couple of years today will be effectuated within 3-6 months, and authorities will therefore not be influenced by the moral responsibilities stemming from the

several-year long stay of any asylum seeker. Manifestly unfounded claims, and applications of those from safe third countries will be channelled into accelerated procedures on a higher scale.

The institution of asylum is frequently debilitated by the large number of migrants who arrive for economic reasons, and therefore block free capacities that otherwise could be focused on the integration of genuine asylum seekers. On those grounds, expulsions through readmission agreements or directly to the countries of origin will be effectuated.

III.E.2.h. Selection of refugees

Ageing populations will expand the need for a well-trained, skilled labour force. Countries already in need of labour will set up quotas for migrants whom they wish to receive. For example, the German population will reduce from the present 82 million to 62 million by 2040 if the present population trends continue. A German expert commented that Germany would not be able to pay its ageing population unless migrants join the decreasing labour force. According to his estimates, Germany would need about 300,000 immigrants a year to keep the population balance, which is three times more than the actual figure of net settlement.¹⁵⁸ Similarly, the Governor of the Bank of England called publicly for a more liberal immigration law in order to meet labour shortages. The need for talented and educated migrants will probably be linked to the provision of asylum. With a system of quotas, those people will be selected from regions or countries in civil war, who have better education; those with qualifications will have a higher chance to have access to asylum and to effective international protection.

¹⁵⁸ Hof, 1999, p.2.

III.E.2.i. Conclusion

Present chapter – *Accession to the European Union* summarised the efforts of the member states of the European Union to face the international refugee dilemma from the perspective of the accession of Hungary. The coexistence of efforts to limit the negative effects of the arrival of migrants by a multilevel approach and by simple measures to block them from entering EU territories is well shown by the documents of EU level negotiation talks. The ‘*acquis communitaire*’ the set of decisions and regulations adopted by the EU reflects more the willingness of member states to simply keep migrants out their territories. The implementation of these measures by an accession state such as Hungary leads to the enlargement of ‘Fortress Europe’, an area where the ‘right to asylum’ provided by the Universal Declaration of Human Rights is observed *ad tangentem*. This will be demonstrated in Chapter IV. – *The institution of asylum in Hungary*.

IV. THE INSTITUTION OF ASYLUM IN HUNGARY

The legal system of asylum expresses the focal points of a nation's political considerations. In addition, several factors, such as policies of state institutions, the lobbying power of NGOs, and the pressures of international political ties, determine the real quality of protection offered by a country to asylum seekers and recognised refugees. The media and the openness of society to immigrants also shape the features of refugee protection. These are the factors that make the differences between countries that have accepted similar legal standards. These aspects are most well illustrated in recognition rates, the living conditions in holding centres for asylum seekers, as well as in the quality of integration possibilities and integration programmes after recognition.

The present chapter evaluates the major dilemma-areas related to the conditions of asylum seekers. The principles of Hungary's international legal obligations presented previously in Chapter II. – *The international legal obligations of Hungary*. Will assist in the evaluation of these conditions. During the analyses, the influence of the policies of the European Union (described in Chapter III. – *Accession to the European Union*) will be also referred to, as will the wider context of asylum policies in Hungary.

IV.A. The institution of asylum before 1998

IV.A.1. The political context

Hungary has been facing wide scale immigration since 1987, the very beginnings of the visible political transition in the Central European region, when migrants started to arrive into its territory. Before that time, Hungary had been a migrant sending country, and was thus turned rapidly into a host country during the last years of the Communist world. These years of transition to a new democratic political system witnessed the manifestation of the

influence of the global and regional migration crisis in national politics; in the media, in the management of police and border guards operations, health care services, etc. Although the ratio of Hungary's foreign population did not reach that of the wealthiest developed countries, - e.g. as in Germany, France, Belgium, and Switzerland, where that ratio exceeds 5%, - public awareness over the seriousness of the regional and international migration crises grew sharply.

It was not just the media that brought the reality of these crises in neighbouring countries closer, especially those in Yugoslavia and Romania, as well as in other parts of the world. The presence of refugees and migrants was reflected in the mirror on national statistics on immigration and in the growing number of asylum applications. The presence of these foreigners also became visible, especially around refugee camps and in bigger cities. Hungary, formerly a country of origin for migrants, became a host country already during the last years of the Communist world.

Hungary welcomed a significantly greater number of asylum seekers than other Central European countries, regarding both those who wanted to stay and those who used Hungary as a transit country. Political actors realised that many of the immigrants could not or did not wish to return,¹⁵⁹ not even in the long term, they would therefore constantly be present legally or illegally in the country. On one hand, this was an issue to be handled without relevant previous experience, and on the other, the new and visible presence of individual

¹⁵⁹The return to one's homeland may be of enormous hardship, and impossible to realise without international help. UNHCR's issued a special edition on the return of Liberians, Mozambicans, Cambodians, the people of Myanmar and Ethiopians to their home land. Some still decided to stay in the host country. UNHCR, 1998, p.3.

human beings, who had left behind their homes and familiar environments, who arrived in Hungary with a high degree of uncertainty about their future.

IV.A.2. The development of the legal framework

Before the political transition to democracy in 1989-1990, the Hungarian legal system seriously lacked regulations concerning refugees. Only one provision of the Hungarian Constitution referred to the right to asylum, and protection was provided only according to the decision of the government, e.g. to Greek and Chilean Communists fleeing their countries.¹⁶⁰ Therefore with the emergence of migration waves, a series of national laws and constitutional changes¹⁶¹ were elaborated and ratified, and international agreements were signed to fill the apparent legal and administrative gap.

IV.A.2.a. The beginnings

The *1951 Geneva Convention on Refugees* and its *1967 Protocol* was enacted in Government Decree 15 of March 1989, by the last Communist government of the country. Hungary opted for the geographical reservation at Art. 1.B.1 (a), which limited the country's obligations to the protection of refugees of European origin. In other words, Hungary decided to provide asylum only for those who were persecuted within the former communist states of Europe, as there was no chance for refugees arriving from the more

¹⁶⁰ Art. 67 of the 1949 Hungarian Constitution stated that "everyone who is persecuted for his democratic behaviour, or for his activity to enhance social progress, the liberation of peoples or the protection of peace, may be granted asylum".

¹⁶¹ Art. 65 (1), Hungarian Constitution (1989). The Republic of Hungary, in accordance with conditions determined by an Act of Parliament shall grant the right of asylum seekers to foreign citizens and displaced persons persecuted in their country and place of residence, respectively on the basis of race, religion, nationality, language or political affiliations.

wealthy West European states. Despite the geographical reservation, non-Europeans were still offered protection: prior to 1 March 1998, non-Europeans had to apply for refugee status at the UNHCR, and the few that were recognised (some 260 out of 2700 applicants) received social allowances from the same organisation. The *1951 Geneva Convention* became the foundation of the Hungarian refugee law.

During 1989, a Ministerial Cabinet Decree was issued on the Recognition Process for Refugees, which set the basic legal structure by regulating the refugee recognition procedure from beginning to end¹⁶². According to the Decree, refugees are those who have a well founded fear of persecution due to race, religion, national origin, political opinion, or membership in a particular social group.

IV.A.2.b. Efforts for a detailed legal system

A set of national laws were passed by the Parliament in the following years, some of them declaring Hungary's adherence to international agreements. In addition, binding and non-binding international legal instruments were signed that influenced the legal system of asylum. In 1993, a new law on the *Entry, Stay and Immigration of Foreigners in Hungary*¹⁶³, and a related government decree was issued to arrange the operation of the alien police system.¹⁶⁴ This law regulates the operation of all authorities dealing with illegal migrants in the country, including those who do not ask for asylum, or whose claim is rejected.

¹⁶² Cabinet Decree 101 of Sept. 1989

¹⁶³ Law 1993:86 on the *Entry, Stay and Immigration of Foreigners in Hungary*

¹⁶⁴ Government Decree 64/1994 (IV. 30.) on the realisation of Law 1993:86, on the *Entry, Stay and Immigration of Foreigners in Hungary*

A law in 1995 on *National Security* detailed acceptable reasons for rejecting a person's asylum application, such as activities against the state's territorial integrity, or against its political, economic or defence interests.¹⁶⁵ Another new law in 1996 further defined issues concerning international criminal legal aid, the details and conditions of extradition, the definition of the safe third country, and of the country of persecution.¹⁶⁶

Despite the above efforts to create a stabilised legal system, Hungary still only had a "patchwork of legislation and government decrees concerning refugees and migrants"¹⁶⁷ before 1998. For example, while the Constitution includes no geographical reservation as far as refugees are concerned, the adopted form of the 1951 Geneva Convention did. Therefore a "quite astounding anomaly result[ed]. The constitutional guarantee of asylum for refugees fleeing persecution anywhere in the world [was] ignored, while the geographical reservation to the 1951 Convention [was] followed."¹⁶⁸

Moreover, several laws were not enacted by the Parliament, but appeared in the form of government decrees.¹⁶⁹ There were apparently no national laws or regulations on the

¹⁶⁵ Law 1995:125 on National Security

¹⁶⁶ Law 1996:38.

¹⁶⁷ Fullerton, 1996, p. 499.

¹⁶⁸ Fullerton, 1996, p. 515.

¹⁶⁹ Some of the initial decrees: Legal Decree 1989:15 on the Convention and Protocol relating to the status of refugees. Legal Decree 1989:19 on the legal status of the persons recognised as refugees. Cabinet Decree No. 1989:64 (IV.30) MT on refugee reception centres. Cabinet Decree 1989:101 (IX.28) MT on the procedure for determining refugee status. Agreement between the Hungarian Government and UNHCR dated 4 October 1989, concerning co-operation between the Hungarian Government and UNHCR. Act 1991:26 on the judicial review of administrative decisions (which overrules some of the legal delays provided for in Cabinet Decree

situation of refugees and those applying for asylum. Similarly, no matching institutions were established. This situation lasted until the Parliament accepted the new Law on Asylum on 10 December 1997,¹⁷⁰ which was the result of legislative effort to 'sew the carpet' of the legal regulations in order to create a more harmonised and coherent system.

IV.A.3. Administrative drawbacks

During and after the political transition from Communism, the lack of legal regulations on the treatment of migration affairs was accompanied by the apparent lack of administrative bodies to welcome and effectively deal with the waves of migrants arriving to the country. Churches and international non-governmental organisations were the only actors that could react quickly by setting up camps, and collecting and distributing food, clothes and medicines. Hungarian people welcomed immigrants to their homes and helped them to find jobs and long term accommodation. Later on, various decrees ordered the institutionalisation of the management of migrant-affairs, but a great share of the practice was based on "unwritten administrative policies that have developed to fill yawning gaps in the legal structure"¹⁷¹.

As the 1951 Geneva Convention was signed with a geographical reservation, state authorities transferred the responsibility of determining the applications for asylum of non-Europeans to the UNHCR. The UNHCR took this exceptional role, following an unofficial and verbal agreement with the government in 1989, to act as an official body in the process

1989:101). Act 1993:86 on the Entry and Residence of Aliens and on Immigration. Act 1993:55 concerning Hungarian Citizenship.

¹⁷⁰ Law 1997:139 on Asylum

¹⁷¹ Fullerton, 1996, 511.

of deciding over the asylum requests of non-European refugees. This responsibility of the Office ended in March 1998, with the entry into force of the Law on Asylum. The length of this nine-year long interim period shows that there was no real government intention, just a gradually growing EU pressure to establish a non-discriminatory recognition system for both Europeans and non-Europeans. During this time, and especially in the period before 1995, asylum was to be provided primarily to ethnic-Hungarians arriving to the country and to people from the former Yugoslavia. Thus to a certain degree, Hungary had a basic form of ethnic and local asylum programme, but it did not face international refugee issues. A few other inherent negative aspects deteriorated the possibility of an efficient administration of refugee issues. Firstly, the administration of migration issues was (and is partly still) done by inadequately trained officials. Given the lack of a precise system of regulations, these officers had to decide on several administrative matters based on their individual considerations, with little support from elsewhere. The lack of harmonised co-operation and the limited flow of know-how between NGOs and public authorities resulted in the further weakening of the administration of asylum affairs.

IV.B. The institution of asylum after 1998

The need for a new law regulating asylum issues was obvious years before its actual ratification in 1997. As leading legal experts expressed: "Hungary in 1995 is at crossroads.... New patterns of decision-making, new political responses are evolving. ... Yet, there is a significant legal vacuum. This situation affects refugee and migration policy in particular...."¹⁷² The elimination of this vacuum was greatly facilitated by the EU, which

¹⁷² Fullerton, M., Sik, E., and Toth, J. eds., 1995, p. 7.

began concrete negotiation talks with Hungary in 1998; after a longer preparatory period, which began in 1993.

The pressure created by the arrival and presence of migrants on several areas of state administration such as border guards, alien police, national security forces and the labour regime, as well as the growth of related political expertise, resulted in a willingness to try and balance the situation. This produced the present institutional framework to deal with asylum seekers through a more transparent system of legal and administrative regulations.

IV.B.1. The New Law on Asylum

The Ministry of the Interior launched the preparatory work on the bill on asylum in 1996. The overall aim was to eliminate the controversies about the notion of refugees, and to clarify the legal situation for asylum seekers. On 9 December 1997, after an almost three-month-long debate, the Hungarian Parliament adopted by 271 votes in favour and 21 against, the Asylum Bill, which entered into force on 1 March 1998. This Law 1997:139 on Asylum was a great step forward towards the harmonisation of previously existing regulations on refugees.

First, the Law lifted the geographical restriction against non-European refugees, which on a theoretical level was the most significant step forward. The new law expresses an institutionalised concern for the observation of the relevant international legal instruments, for the equal treatment of asylum seekers from all origins, and for a fair recognition procedure. It meets, in general, the requirements of the European Union as presented in the 'acquis communautaire', and those of the UNHCR.

The law did not and could not cover all aspects of refugee issues. The legislation moved on, with a solid base to build on. Two government decrees gave more concrete meaning to

the Law on Asylum, providing more exact details on the refugee recognition procedure and on the social services for asylum seekers and recognised refugees.¹⁷³ Moreover, after gaining full membership in the EU, the legal system will have to be modified again to be in accordance with the Dublin Agreement.

This new law on asylum, according to UNHCR, is a “distinct improvement of the system in place since 1989... The lifting of the geographic limitation, the discontinuation of the 72-hour time-limit for lodging an application, the procedure and status established for beneficiaries of temporary protection and for persons who may not be Convention refugees, but whose expulsion raises compelling human rights issues, are major achievements of the new legislation.”¹⁷⁴

At the same time, the new law has a few shortcomings. According to a representative of the Hungarian office of UNHCR, the most important weaknesses are as follows:¹⁷⁵

1. The Law does not fully match international migration, alien police, or health care related regulations.
2. The law does not prohibit police or border guards from initiating expulsion during and simultaneously in the asylum procedure, although application for asylum does suspend the realisation of the expulsion.

¹⁷³Government decree 1998:24 (18 February) on the detailed rules of the refugee recognition procedure and the documents of asylum seekers, temporarily protected persons and persons authorised to stay. Government Decree 28/1998 (18 February) on the provisioning and support of foreigners under Law 1997:86 on Asylum.

¹⁷⁴ UNHCR, 1998a, p.3.

¹⁷⁵ Statement by Lorenzo Pasquali, Deputy Representative of UNHCR in Hungary, 28.04.99.

3. Alien police and border guards may turn to the embassy or consulate of the country of origin, through which action the person may truly become a refugee. Such lack of cautious and confidential treatment of data on asylum seekers leads to the creation of refugees, which may also result in the harassment of family members in the country of origin.
4. The Office of Refugee and Migration Affairs (ORMA) terminates the determination procedure of those asylum seekers who disappear. Usually these people try to escape to Austria, or to another country in the West, but if they are returned from these countries on the basis of extradition agreements, they may be sent back without further investigating the reasons behind their original claims.
5. The separate treatment of the application of those with special protection needs is ignored. Although each applicant may have special protection needs, those belonging to certain groups of people, e.g. unaccompanied children, or people traumatised by an act of violence need *ab ovo* a specialised care.
6. While there is a possibility to ask for the court revision of the first instance administrative decision for all asylum seekers, those undergoing the airport procedure may be returned home, as their appeal has no suspensive effect.

The development of the legal and administrative system concerning asylum seekers obviously did not stop with this landmark law. New measures are constantly being taken, although their motivation lies primarily under the influence of the accession procedure for the European Union. EU expectations are especially clear in that further developments concerning migration should contribute to the blocking of illegal transit of foreigners

through Hungary.¹⁷⁶ Thus, the country is motivated politically to return migrants in order not to become a container of those who could or should not make it to the West.

Today's expectations to protect the EU from more migrants collide and interfere with Hungary's international human rights obligations to protect refugees. The asylum procedure, stemming from these international obligations, is a temporary halt to and a suspension of the objective of the alien police procedure: the expulsion of illegal migrants from the country. In 1998 and 1999, out of the 7,118 and 11,499 asylum seekers respectively, 5,045 and 6,589 persons each year violated the entry and exit regulations of the country, before applying for asylum.¹⁷⁷ This shows that the majority of asylum seekers were illegal migrants, and even those who applied during a legal stay in the country, became illegal migrants due to the expiration of their visa during the asylum determination procedure.

Low recognition rates further prove that for the majority of asylum seekers the procedure is no more than a suspension of their return. In 1998, out of 7,118 asylum seekers, the applications of 4,558 persons were considered. Only 362 persons (8%) were provided refugee status and 232 (5.1%) were given the year long and renewable 'person authorised to stay' status, a subsidiary form of protection.¹⁷⁸ The rest returned to the control of the

¹⁷⁶ The EU Summit held in Vienna in December 1998 confirmed that the hopes of applicant states greatly depend on the euro-conform character of the administration of domestic justice affairs including migration issues, as well as on the efficiency of their realisation.

¹⁷⁷ Source: Office of Refugee and Migration Affairs

¹⁷⁸ Source: Alien Police Department of the National Police Headquarters.

Border Guards or the Police,¹⁷⁹ had to face the immediate implementation of the expulsion order, or wait until Hungarian authorities find that the realisation of expulsion (e.g. to Kosovo) ceases to be dangerous.

IV.B.2. Basic institutional structures

The present subchapter summarises the main institutions dealing with asylum seekers. First of all, the enormous strain on administrative bodies in the CEE region must be recognised. In these countries, the incorporation of Western asylum policies "presupposes a set of institutional transformations ranging from, for example, border regimes, the judicial system and administration, to the implementation of international humanitarian norms."¹⁸⁰ The great pressure to develop these institutions also has a special political context. "This shift towards liberal values and institutions, required for the asylum system to meet international standards, is impeded not only by this sense of urgency but also by the fact that the extension of the EU refugee regime is inspired more by security considerations than by humanitarian reasons."¹⁸¹ The roles of the below institutions are thus determined by the responsibilities divided between anti-migration, and to a far less extent, pro-asylum tasks.

¹⁷⁹ Those foreigners who were under the control of the Alien Police Department of a Border Guards Directorate or Police Headquarters before the asylum procedure return under the control of the same department. Those who applied for asylum at the Office of Refugee and Migration Affairs while staying legally in the country or without being apprehended previously by either of the above authorities are under the control of the Police after the asylum procedure.

¹⁸⁰ Lavenex, 1999, p. 155.

¹⁸¹ Lavenex, Ibid.

IV.B.2.a. Immigration and Citizenship Office

The Immigration and Citizenship Office - successor of the Office of Refugee and Migration Affairs (ORMA)¹⁸² from 1 January 2000 - performs the major roles concerning the official and administrative activities related to refugee and illegal migration affairs. The new Office, with a staff of some 180 persons, embodies the former Office of Refugee and Migration Affairs, the Alien Police Department of the National Border Guards and that of the National Police Headquarters, as well as the Citizenship Department and the Migration and Refugee Department of the Ministry of Interior. The objective of this unification was to create a central authority in place of the present fragmented structure, which could communicate efficiently with EU bodies, and oversee all duties related to the presence of aliens in Hungary.

The department responsible for determining asylum claims decides over the applications of asylum seekers and appoints such persons an obligatory place to stay during the period of the asylum procedure. Asylum seekers usually stay in one of the three Reception Centres of the Office, but when these are full, the Community Shelters of the Border Guards may also accommodate asylum seekers.

The Office, on the grounds of interviews with asylum seekers and other sources of information, may provide refugee status, a 15 year permission to stay with settlement benefits, or the 'person authorised to stay' status, which is a one year but renewable protection. The Office has also the authority to provide the 'temporary protected person' status to asylum seekers when the Government decides to protect all individuals who flee *en masse* and who belong to a persecuted ethnic, religious, etc minority. In this latter case,

¹⁸² The responsibilities of ORMA are defined in Art. 24 of Law 1997:139 on Asylum

ORMA has to establish simply whether or not the applicant belongs to the protected group of people.

The major deficiency of the Refugee Affairs Directorate of the Immigration and Citizenship Office, which handles asylum claims, is its enormous lack of staff. The number of caseworkers who decided over asylum claims decreased from 28 to 23 during 1999, which left appallingly limited time for the more than 11,499 individual asylum seekers during that year. The operation of the Immigration and Citizenship Office promised to speed up the recognition procedures,¹⁸³ and PHARE funds have been allocated for the restructuring of its operation.¹⁸⁴

IV.B.2.b. Alien policing by the Border Guards and the National Police

The Hungarian alien police system is already in line with the EU standards, and will be fully adjusted by the end of 2001, and thus before 1 January 2002, the hypothetical date of full EU membership. The alien police system is based on three major legal instruments, which have contributed to this process: *Law 1993:86 on the Entry, Stay and Immigration of Foreigners in Hungary*, the corresponding *Government Decree No. 1994:6*, and *Law 1999:75 on the Regulations of Actions against Organised Crime and related Phenomena* which amends several stipulations of *Law 1993:86*.

The overwhelming majority of asylum seekers are in an illegal situation in the country and therefore are under the control of the Border Guards or the Police. The operation of the Border Guards is regulated by *Law 1997:32 on the Control of Frontiers and the Border*

¹⁸³ Dr Zsuzsa Végh, the head of the new Office, found that the establishment of this institution may lead to faster procedures (within the 60+30 days time limit set by the 1997:139 Law on Asylum), due to the harmonisation of alien police and refugee recognition procedures. Source: Magyar Hírlap, 12 Nov. 1999.

¹⁸⁴ See the sub-chapter on the Phare funds later on.

Guards. This law provides that the Border Guards perform alien police functions as described in the *Law 1993:86 on the Entry, Stay and Immigration of Foreigners in Hungary*.

The Alien Police Departments of the 10 Border Guards Directorates are in charge of all those violating the rules of entry to and exit from the country. These Departments are in charge of foreigners apprehended in their respective territories until the person leaves the country or his/her stay is legalised, including the assignment of a compulsory place of residence.¹⁸⁵ Foreigners apprehended in an illegal situation within the country (i.e., those without a valid document to stay, illegal workers, foreigners committing a criminal offence) are under the control of the Alien Police Department of one of the 19 county level Police Headquarters or the Budapest Police Headquarters.¹⁸⁶

The objective of the (Border Guards and National Police) alien police system is to return illegal migrants to safe third countries or to their countries of origin applying the least expensive and fastest solution. The quality of administrative measures, especially those in

¹⁸⁵ The Airport Border Guards Directorate, besides its own Community Shelter, manages an accommodation shelter with a capacity for 8 people in the 'international' zone of the Airport. This facility is for those who have no valid documents to enter the country, but have to wait for a few days until return. Migrants at this facility, similarly to those whose return could take place within a few hours, stay in the international zone, but may apply for asylum. Those who apply for asylum here are accommodated at the Community Shelter of the Airport, similarly to those who are apprehended by the Border Guards' patrol inside Budapest, especially at railway-stations.

¹⁸⁶ The Border Guards deal with more than 70% of all cases under the control of the Alien Police function of the two authorities, and with 90-95% of cases concerning foreigners violating the regimes of entering and leaving the country. Data estimated by József Dúzs, Head of Alien Police and Refugee Department, National Headquarters of Border Guards.

the tough conditions of compulsory places of accommodation, put enormous pressure on migrants either to agree to return or to try to move. The danger of being returned leads many foreigners to apply for asylum. Application for asylum ensures that they are not returned immediately and have a chance to be transferred from closed shelters run for illegal migrants to an open facility for asylum seekers. Therefore, several non-refugees use, or more explicitly, abuse the institution of asylum. A communication of the UNHCR, although acknowledging this fact, warned however that the measures brought against these people should not infringe on the principles of the international protection of refugees and thereby the institution of asylum.¹⁸⁷

The Border Guards' operation is also under major transformation in order to be able to protect the Schengen borders from outside, and after the accession, to be a principle protector of the Schengen region at its Eastern borders. The Hungarian border control system concerning the operation of the border guards was fully adjusted to the Schengen Manual of Border Control¹⁸⁸ in May 1999.¹⁸⁹ The financial aspects of this transformation are significant, putting an extra burden on the state budget. The example of the Yugoslav crisis demonstrates the expenditures related to a strong border protection: during the first 50 days of this crisis, the cost of tight control on the illegal movement of people amounted to 150 million HUF (640,000 USD).¹⁹⁰

¹⁸⁷ UNHCR, 1998b, p.1.

¹⁸⁸ SCH/Gem-Hand (91) revised version, Brussels, 24 June, 1997.

¹⁸⁹ National Border Guards Directorate, 1999a.

¹⁹⁰ Source: National Border Guards Directorate

According to a study of the National Border Guards,¹⁹¹ the full development of the border guards system as required by the norms of the European Union, would need 37,8 billion HUF (157 million USD) on all the 2,242.622 km long borders of Hungary. This sum could be diminished slightly by Slovakia membership in the Union with 1.77 billion HUF (7.4 million USD)¹⁹², when the Slovak border would become an internal border of the EU. PHARE projects are expected to bring some 5 billion HUF (50 million USD), in addition to the 29 billion HUF (121 million USD) of state funds. Thus, the full reconstruction of the Border Guards still lacks close to 4 billion HUF (16.7 million USD).

The operation of the Border Guards is hindered by the fact that out of the 14,000 positions on this force, only 11,800 are actually filled. The number of those who actually work on the borders in a non-administrative position is just 6,686.¹⁹³ Thus, the border guards/border zone km is 2.98, while the same figure for a Border Guards directorate in the German Republic (with its Polish and Czech border zones) is 6.51. Therefore, more than 6 border guards in Germany control in shifts the movements of persons across borders on average on each kilometer of the border.¹⁹⁴ Presently, an additional increasing and training of staff is planned in order to meet the requirements of the present duties and those of the EU, which would bring the above ratio close to half of the German figure. This extension of staff would cost 7,5 billion HUF (31 million USD).¹⁹⁵

¹⁹¹ National Border Guards Directorate, 1999b, p.17-18.

¹⁹² With Slovakia's membership in the European Union, expenditures of the personnel would diminish with 970 million HUF (4 million USD), and technical costs with 800 million HUF (3.3 million USD).

¹⁹³ Data from May 1999. Source: National Border Guards Directorate, 1999b

¹⁹⁴ National Border Guards Directorate, 1999b, Attachment 8.

¹⁹⁵ Ibid. p. 15.

IV.B.2.c. Refugee assisting NGOs

In addition to the Immigration and Citizenship Office and the alien police bodies of the Border Guards and the Police, the refugee assisting NGO sector also plays a significant role in the formation of the conditions of asylum seekers in Hungary. The first refugee assisting NGOs were created out of local and national initiatives while other international NGOs settled in Hungary as a rapid response to the first influx of mostly ethnic Hungarians from Romania in 1987, in order to protect migrants by providing accommodation, food and shelter. Later on, in 1989/1990, the state established the migrant protection system, and NGOs started to provide specialised services, such as social integration, language training, legal, administrative, and psychological counselling, professional training, as well as campaigns for improving the social acceptance of refugees, in form of education and cultural activities. A few organisations have a defined category of clients, such as non-Europeans, or ethnic Hungarians, while most of them apply no limitations at all.

Presently, during the period when the new Law on Asylum remains the main legal instrument to direct asylum affairs in the country, there are some 15 NGOs in Hungary that are specialised in the protection of and assistance for refugees.¹⁹⁶ The number of

¹⁹⁶ There are now three major types of national refugee assisting NGOs: The first is made up of smaller, less professional NGOs that struggle with their everyday existence. These NGOs are basically run by one individual, usually a recognised refugee or a former immigrant. This is the situation of the Albert Schweitzer Association (Njoku Godwin, president) or the Unity Movement (Davies Otun, president) or the Mahatma Gandhi Organisation (Gibril Deen, president), and the Iraqi Human Rights Committee.

The other form of NGOs is organisations run exclusively by Hungarian professional lawyers, university teachers with wide political links and influence on daily politics. Although these organisations are also dominated by a few individuals, their continued operation is not endangered by the leave of any leading

organisations that engage in such activities may highly change overnight, as several other human rights, charity, church organisations, associations of migrant groups undertake this activity if the number of new arrivals soar.

Migrant assisting NGOs with a human resources capacity to grow, have been going through a process leading to professionalism, where, besides the usually charismatic founders, more administrators, professional managers, and trained social workers appear on the scene. These more professional NGOs stabilise themselves, while the smaller, less professional ones slowly lose their financial and staff resources.

To be effective in their activities, according to the European Council on Refugees and Exiles, NGOs especially need¹⁹⁷

- Financial Resources
- Good working relations with official agencies, including governments
- The trust of the refugees
- Mutual support
- Staff training

member of staff. Menedék (Refuge) Association for Migrants, Helsinki Committee, Martin Luther King Organisations.

The third group of NGOs is international organisations with frequently enormous capacity in providing large-scale support for those in need, including migrants. These organisations are involved less in national policy development, but organise relief campaigns, distributing food, medicines, etc. Red Cross, Interchurch Aid and Maltese Charity Service.

The support of their respective civil societies

1. *Financial Resources*

Funding of Hungarian refugee assisting NGOs comes first of all from the UNHCR, and to a smaller degree, from Embassies, the PHARE funds and Ministries. Hungarian branches of large international charity organisations have better conditions, as they are also supported by their headquarters abroad. As stable financial support is lacking in the majority of refugee assisting NGOs, activities change as funding changes. Given the lack of experience in business activities, most of these NGOs do not engage in profit making activities, which could result in long term financial stability.

2. *Good working relations with official agencies, including governments*

Human rights NGOs may receive various responses from state bodies and authorities. Usually, charity activities are welcome and even supported, while political reflections on decisions of authorities that may undermine their credibility or respect may well be refused.

Some NGO representatives, especially those, who work as free-lance, and without relevant work experience in large, demanding institutions, have not acquired the proper skills for tolerant, diplomatic communication. Unrealistic demands, impolite dialogue, and the raising of scandalous rumours about the staff of individual officers of ministries or other authorities have not led to a balanced communication between some NGOs and the state.

Government agencies still welcome the political opinion of professional refugee assisting NGOs, and heads of these organisations have a huge influence on the formation of refugee

¹⁹⁷ Business Plan of the European Council on Refugees and Exiles. Grant application to the National Lottery Charities Board. Draft of 22 January 1999 - Self-Sufficiency among Refugee-Assisting NGOs in Central Europe p. 12.

policies. For example, Menedék Association prepared a national migration policy plan in 1999 under the commission of the Ministry of Interior.

Channels have been set up for the state-NGO dialogue: The Human Rights Ombudsperson of the Parliament is ready to receive petitions from these NGOs, which channel has been widely used. Although the Ombudsperson has no right to act in place of other national authorities, her power to make proposals on the discovered anti-constitutional matters, and to benefit from the support of the public, the media, the NGOs do influence the situation of refugees/asylum seekers through her.

The Human Rights Committee of the Parliament has also provided a forum for NGOs to have a direct contact with MPs, and wider publicity in case of media presence during the sessions. Here, NGOs may intervene at their request at the three-four meetings a year that specialise on refugee and migration affairs.

3. The trust of the refugees

Refugees and asylum seekers generally do not know much about the NGOs they may turn to. Advertisement of NGO services at border checkpoints, reception centres and community shelters is limited, which also hinders refugees from quickly establishing balanced and trustful contacts with NGOs. This is further complicated by the highly differing professional experience of NGO representatives in legal matters. Moreover, refugees intend to remain only for a short while in the country, and many of them do so. Therefore, there is no time to build real trustful relationships between refugees and NGO staff.

4. Mutual support

International human rights organisations have been very active in initiating or establishing co-operation with Hungarian refugee assisting NGOs. Western and North American states

have actively supported these initiatives, investing in the creation of more stable civil societies, and therefore in the blossoming of economic and political ties.¹⁹⁸ Refugee assisting NGOs have been gaining special attention, as the correct management of refugee affairs in Hungary was hoped to be created partly by these organisations.

Despite efforts to create a unified power force between these NGOs where duties are shared and harmonised, there is real co-operation only between the professional organisations. Less balanced organisations have difficulties in creating a common standpoint, to share responsibilities and information.

5. *Staff training*

The need for training of the staff of these NGOs is apparent as state authorities gradually settle in the new system of migration affairs and raise higher expectations. Thus, each NGO is put under the pressure to reach higher levels of proficiency, in order not to lose political and social influence and be deprived of funding.

The 'natural selection' of NGOs goes on also at the educational level. NGOs led by university teachers have found channels for the ongoing training of their staff, while other NGOs do not have such an inspiring educational background. For this latter group, the lack of training leads to a loss of compatibility with the constantly more complex legal and political environment of asylum issues in the country.

6. *The support of civil society*

Foreigners, even those of non-European origin are still more accepted these days in Hungary than in other Western societies. Intolerance, racial hatred is on the rise, but still,

¹⁹⁸ Such an initiative was the establishment of CEFRAN - the Central European Forum of Refugee Assisting NGOs, Association supported by ECRE, European Council on Refugees and Exiles, with 7 members in Hungary.

the vision created about foreigners includes more elements of sympathy and curiosity than concern or hatred.¹⁹⁹ Therefore, migrant assisting NGOs bear public sympathy above European average.

The media frequently presents NGOs as the brave defenders of foreigners against the brutality of authorities. On these grounds, the moral support of civil society is positive, although there is little knowledge about the exact activity of these organisations. Local volunteers are plentiful who would like to work for foreigners, and, several foreigners from developed countries are also interested in volunteering.²⁰⁰

7. *UNHCR*

The local representative branch of the United Nations High Commissioner for Refugees has a key role in co-ordinating the efforts of Hungarian NGOs. With its more political, balance seeking role, it may often intervene in the NGO-government dialogue. The Office has a rather small staff, with only one Hungarian-speaking lawyer. As UNHCR lacks funding world wide, the Hungarian office also lacks financial means. The shortage of staff and funding forces the Office to concentrate its efforts on a few areas, such as the training of staff at Refugee Directorate of the Citizenship and Immigration Office who deal with applications and the legal reform of the Hungarian legal system of asylum. The UNHCR, given its limited human capacity is not present during interviews with asylum seekers,

¹⁹⁹ This fact has been repeatedly expressed by Stefan Berglund, representative of UNHCR in Hungary, and was confirmed by a series of tolerance-monitoring research headed by Endre Sik from the Migration Research Group of the Hungarian Academy of Sciences.

²⁰⁰ For example, on the basis of a private initiative by an American lady, some 20-30 Westerners and Hungarians organise weekends once a month for children in the largest facility for children, the Debrecen Reception Centre. - The RAP, the Refugee Assisting Project.

despite its legal authorisation to do so. At the same time, UNHCR has played a unique role in transforming the Hungarian asylum system as the most prepared source of know-how on migration management.

The Office's activities also include payment of an NGO, the Helsinki Committee for the running of legal consulting services in Community Shelters and Reception Centres. In addition, the UNHCR supplies country information to the staff of the Office of Refugee and Migration Affairs – the Citizenship and Immigration Office for the better consideration of asylum claims.

IV.B.3. EU pressures for asylum and migration management

Simultaneously with the preparation and the implementation of the new Law on Asylum, Hungarian co-operation with the EU extended with new forms for channelling expectations as well as expertise and financial support. The concrete accession procedure, which started on 31 March 1998, included a major accession element, namely the regular compilation of an evaluative study by the European Commission, and the development of the PHARE co-operation within the framework of the annually launched COP programmes. These two channels are the most explicit forms of expressing EU policies towards Hungary's new role in the migration and asylum regime of Europe.

IV.B.3.a. Bilateral relations

Bilateral connections, outside the framework of EU level co-operation, must also be mentioned, which have significantly shaped Hungary's asylum policies. However, the bilateral influence of West European states has not been widespread. The ORMA – Citizenship and Immigration Office has been receiving regular training and materials from the experts of the German Office of Refugee Affairs to facilitate the implementation of EU

legal regulations in the Hungarian practice. A regular yearly training by French experts on the recognition of false documents and German Government support in early 2000 to purchase 70 night vision devices and lap-tops, and later during the same year, to acquire heat detectors, are the major bilateral means of support for the development of border guards. No other significant bilateral contribution has been provided for the modification of the asylum and migration system of Hungary.

IV.B.3.b. The reports of the European Commission

These Reports describe all policy and administrative factors that are taken into consideration when determining the country's capability to gain full membership, including the Third Pillar Justice and Home Affairs (JHA) area. The major evaluative statements of these studies outline the focal points and trends of EU influences during the accession period. The 1997 Law on Asylum and several other measures presented later on are clear answers to the expectations summarised in these studies. These Reports are unique in their character as they represent those very few statements that the EU has openly communicated on a country specific basis.

1. The 1997 Opinion of the European Commission

The first study of the European Commission in 1997: 'Commission opinion on Hungary's application for membership of the European Union', was one of the major preparatory policy papers before the launching of the negotiation talks.²⁰¹ The assessment underlines, that "[a]n important priority for the near future will be developing more effective border management systems, especially on the future external borders."²⁰² The assessment warns about the inevitability of the implementation of the same visa regimes as the EU: "The visa

²⁰¹ European Commission, 1997. p. 64-66.

²⁰² *Ibid.*, p. 66.

systems with regard to the NIS and other non-associated neighbours remain unsatisfactory and Hungary will need to ensure that the facilitation of crossing by ethnic Hungarians from neighbouring countries does not detract in any significant way from the need to carry out effective border controls at the future external border.”²⁰³ The Commission stressed as a priority the abolition of the geographic reservation against non-Europeans, which was solved by the 1997 Law on Asylum. The conclusion added, that “Hungary is well on the track to meet the justice and home affairs acquis ... , assuming progress continues at the current rate and effective training and institutional development programmes are implemented in the key JHA institutions.”²⁰⁴

2. *The 1998 Regular Report of the European Commission*²⁰⁵

The 1998 Report began with the summary of the Opinion of the previous year, where the “need for efficient border controls including a visa regime increasingly close to that of the EU and an asylum policy ... with sufficient resources” was emphasised. The 1998 Report welcomes the conclusion of additional readmission agreements with EU states, the implementation of the then new Law on Asylum which lifted the geographical reservation against non-Europeans, and the Law on the Border Protection of November 1997,²⁰⁶ which covered the management of border controls and defined the organisational structure of the Border Guards. The report found that Hungary had proven her capacity to progress in the harmonising of its asylum policy and in the creation of a more efficient border control system.

²⁰³ Ibid.

²⁰⁴ Ibid.

²⁰⁵ European Commission, 1998a, p. 29-30.

²⁰⁶ Law 1997:32 on the Control of Frontiers and the Border Guards

The Report asked for “a law on... a visa policy suited to the requirements of the EU (and covering the Commonwealth of Independent States), as well as an increase in human resources, with adequate pay and suitable training, so that the new legislation (particularly that on asylum) can be implemented.”²⁰⁷

3. *The 1999 Regular Report of the European Commission*²⁰⁸

The Report of 13 October 1999 welcomed the conclusion of readmission agreements with EU countries and other CEE states. At the same time, the Commission was dissatisfied with the implementation of visa obligations for airport transit of nationals of certain countries that has not been achieved according to the EU Joint Action on airport transit arrangements introduced in September 1998.

The Report clearly stated that the country should make further measures to align its visa legislation and practice with that of the EU, and to improve the effectiveness of border control. The Report highlighted the importance of staff training at ORMA and the upgrading of necessary equipment. In addition, the Report stated, that “[i]t is also important to provide for a direct online connection between immigration offices, border posts and diplomatic representations.”²⁰⁹

The serious backlog at the authority determining asylum claims, and the low operational quality of the court of appeals within the asylum determination procedure was criticised. The Commission demanded the improvement of the living conditions at the reception centres and the construction of new ones in order to cope with the increasing number of asylum seekers. In conclusion, the Commission found that “no real improvement can be

²⁰⁷ European Commission, 1998a, p. 30.

²⁰⁸ European Commission, 1999, p. 50-53..

²⁰⁹ European Commission, 1999, p. 51.

reported on border control and asylum. Further efforts are required ... on border control, both at border posts and on areas without border posts ("green border") in accordance with Schengen standards, and on asylum through the establishment of new reception facilities for asylum seekers, an increase of qualified staff and further harmonisation with the EU procedures."²¹⁰

The reaction of Hungarian authorities shows a willingness to follow the proposed actions of these studies. For example, the Human Rights Committee of the Hungarian Parliament held a meeting at the largest Reception Centre (in Debrecen) on 3 November, soon after the country received the 1999 Regular Report.²¹¹ The members of Parliament agreed that the conditions at the Centres must be ameliorated, as suggested by the Report.

IV.B.3.c. The Phare programmes

The integration process includes several concrete initiatives by EU partners. These efforts include the Europe Agreements, a series of biannual bilateral meetings between the EU and each associated country; the Structured Dialogue, a forum where EU institutions and the associated countries may discuss various policy fields; and the Accession partnerships. Other EU funds for education, such as the Tempus, provide grants for several smaller education programmes including those bodies dealing with asylum seekers.

One of the most important sources of the integration process is the Phare Programme, which provides expertise for the transformation to a market economy and the institutions of the associated Central European states. The Programme co-finances projects through the preparation of studies, capital allocation, loans, and direct investment in infrastructure. A

²¹⁰ Ibid. p.53.

²¹¹ Meeting reported by all main TV channels, + extended report by TV2.

1999 Government decree on the priorities of the Phare Programme selected the development of border protection, public administration and the judicial system, in addition to eight other fields for Phare support.²¹²

The Twinning Programmes, which specialise in institutional development, form part of Phare programme. Phare assists those states that apply for it in training, or it may appoint relevant experts to the country. Hungary most often seeks the partnership of German, or less frequently, Austrian partners for the training of the staff of the Border Guards or the Office of Refugee and Migration Affairs.

The Phare support is allocated within the framework of the so-called COP programmes: COP'97, COP'98, and COP '99. These programmes, each covering a two to three year, overlapping period,²¹³ are jointly financed by the Phare funds and by the Hungarian government. The latter party must cover at least 50% of the budget for each programme item.

In addition to the general Reports of the Commission in 1997, 1998 and 1999, specific reports have been also prepared on the areas of Justice and Home Affairs. These reports also set the main objectives for spending Phare support. Interestingly, the reports concluded by the EU experts discussed their view on the asylum institution just *per tangentem*, and focused primarily on border control and fight against organised crime, including human smuggling. The first Report concluded by German border control experts in mid-1997, was the first contribution to the preparation for establishing compliance with the Schengen Convention. The 1997 Report indicated a "tremendous lack of equipment and basic

²¹² Government Decree No. 1062/1999 (V.31.)

²¹³ COP'97 covers 1997-2000, COP'98 covers 1999-2000, and COP'99 covers, according to present plans, 2000-2002.

infrastructure to even execute basic control",²¹⁴ concerning the operation of border guards:

The Report proposed the following actions, which were to be financed partly from Phare funds:

- A nation-wide computer network and a unified border computerisation system to control activities;
- Technical equipment for the detection of false or forged documentation;
- Technical equipment for the performance of lorry checks;
- Training for officials at the border posts.

Between July and September of 1998, experts of the Member States joined Phare representatives to analyse the two major areas of border control, namely control at border checkpoints and the communication and computerisation of related offices. The feasibility study of the 'Hungarian Border Control Programme'²¹⁵ of 1998 stated that "Hungary faces significant difficulties concerning the control of its borders... Hungary has common borders with an EU member state, future member states, but also with states without real chance of accession in the near future. In addition, the country is also close to a crisis zone. Therefore, border control is a complex issue, and only few EU countries, if there is such at all, have similar problems."²¹⁶

This study, which mentioned the main requirements for accelerating and rationalising the operation of the Office of Refuge and Migration Affairs, (expansion of staff, computerisation) became the major resource material for the planning of the COP

²¹⁴ Quoted in: Phare, 1998, p. 55.

²¹⁵ PHARE, 1998.

²¹⁶ Ibid. p. 5.

programmes and for the channelling of Phare funds to Hungary. The strengthening of border control that has resulted from this focus has had an enormous influence on the operation of the asylum system in the country, as asylum seekers are mostly illegal migrants.

1. COP'97

The programme of 2,033 million HUF (8.47 million USD) covered primarily the preparation of the feasibility study on the 'Hungarian Border Control Programme'²¹⁷ in 1998, which was the only migration and asylum related Phare expenditure that year. These figures include both the EU and the Hungarian contributions.

In 1999, and 2000, the COP'97 programme covers the professional and language training of border guards, police, and officers of the Immigration Office, and includes training on how to fight organised crime. Experts of Germany, France, Austria and Spain perform the professional training within the framework of Twinning programmes by providing their experience and expertise to Hungary. A special element of the professional education programme is the training in the management of border control on non-EU frontiers (by German experts) and that of internal EU borders (by French and Austrian experts). The acquisition of equipment for border guards began in late 1999 within this programme.

2. COP'98

The 4,160 million HUF (17.33 million USD) in funds allocated in this programme cover the further training of border guards and police on combating organised crime (including human smuggling), and the launching of Twinning programmes in the area of asylum claim determination. The acquisition of equipment for border checkpoints and the computerisation of information flow began with this programme.

²¹⁷ PHARE, 1998.

3. *COP'99*

COP'99 funds of 6,553 million HUF (27.3 million USD) are being used for the acquisition of equipment for the control of migration on the green border, the restructuring of the operation of the border guards, and the preparation of the police forces to fight illegal migration. As far as the operation of the Citizenship and Immigration Office is concerned, some 833 million HUF (3.47 million USD) is spent on the development of the operation of the Office, of which 82% is for the development of its regional network and infrastructure, while the rest is for training through the Twinning Programmes. Finally, COP'99 allocates funds for the development of a unified visa policy, with special regards to the computerisation of the visa distribution system by foreign representations.

4. *Financial analysis*

The operation of the above Phare programmes explicitly reveals the major focus points of EU influence. The Three COP programmes of the Justice and Home Affairs area include a 12.75 billion HUF (53 million USD) budget with Phare and government contribution. Out of this total sum, 486 million HUF (2 million USD) is invested in the development of the asylum system of the country, while some 10.6 billion HUF (44 million USD) is spent on the restructuring of the operation of the Border Guards, and 1.3 billion HUF (5 million USD) on Police, including the direct and indirect functions of alien policing. The above Phare budgets, as open decoders of EU expectations demonstrate the major emphasis given to strong border control, fight against illegal migration and human smuggling, and to a faster and more professional determination procedure.

IV.B.3.d. Government support for EU conformity

The Hungarian government must cover at least 50% of the costs of the Phare programmes. At the same time, the Hungarian government decided to give a far larger contribution to

these and the related Justice and Home Affairs areas in order to speed up the implementation of EU standards and the fulfilment of EU expectations in the country.

The Government Decision on the Priorities and Negotiation Principles concerning the PHARE 1999 Programme²¹⁸ set the development of border protection as one of the 10 national priority areas. Another Government Decision²¹⁹ defined the planned contribution to all Phare funded and other related developments at about 59 billion HUF (244 million USD). These funds went towards legal harmonisation with the EU and institutional development for bodies belonging to the Justice and Home Affairs area, first of all ORMA, the Border Guards and the Police under the control of the Ministry of Interior.²²⁰ The financial support promised in the government decision may change somewhat in the future, but the Government Decision shows a high level of commitment to fulfil EU requirements. It is worthwhile to note that the Phare-channelled EU contribution for the development of the Justice and Home Affairs area during 1997-2002 is 6.37 billion HUF (26.5 million USD), thus no more than the 11% of the state funding for the same area.

The Ministerial level calculation of the distribution of the 59 billion HUF (244 million USD) budget shows a more detailed insight into the Hungarian priorities backing Phare initiatives. The successor of ORMA, the Immigration and Citizenship Office, during 1999 and 2000 will receive: some 160 million HUF (670 000 USD) for the expansion of its personnel, 40 million HUF (166 000 USD) for the construction of a quarantine at one of its three reception centres in Bicske, some 70 million HUF (290 000 USD) for the

²¹⁸ Gov. Decision 1062/1999. (V.31) Art. 1.

²¹⁹ Gov. Decision 2184/1999. (VII.23.) Attachment.

²²⁰ The Ministry of Interior received 42% of all state funds for legal harmonisation and institution development within the framework of the above decision.

establishment of a national and international data transmission network, and more than 40 million HUF (166 000 USD) for the finger-print verification system.

The contribution to the strengthening of border control is close to 10 times more (29 billion HUF-121 million USD) than the government contribution to the reform of the institution of asylum (320 million HUF - 1.33 million USD). During the 1999-2001 period, the government plans to invest close to 30 billion HUF in the expansion of the staff (some 7 billion HUF - 29 million USD), the acquisition of new equipment (19,5 billion - 81 million USD), the development of the community shelters (1.7 billion - 7 million USD) and the training of staff (700 million HUF- 3 million USD).

Out of the total 59 billion HUF (244 million USD) that the Government spends on Phare related programmes, some 1.7 billion HUF (7 million USD) is spent on the establishment of an information network for foreign representations where visas are issued.

IV.B.3.e. Other forms of co-operation

1. The Budapest Group²²¹

The process of implementing EU practices and standards is also supported by the so-called Budapest initiative. The Hungarian government is taking a leading position to advance this initially German proposal launched in 1991 and to maintain the dialogue on measures for controlling illegal migration from and through Central and Eastern Europe. These measures also influence the situation of refugees and asylum seekers, primarily by attempting to block the physical access to request asylum. More than 30 countries participate in this dialogue, admitting the joint responsibility of states in combating illegal migration. The parties agreed at the beginning of the process that non-regulated migratory movements

²²¹ This sub-chapter on the Budapest group is based on various materials with no bibliographical references, only the title. Materials received from the Ministry of Interior.

endanger the stability of each country and may damage the development of relationships between nations. They also recognised that illegal migration is a threat to public safety and stability and bolsters crime, as well as illegal and prohibited employment.

The recommendations of the Budapest Group support all participating countries to develop and control the various aspects of migration management. The Ministerial Conference on the prevention of illegal migration, within the context of the Budapest process held in Prague in October 1997, offered 54 proposals to participating states, openly admitting the priority of the co-operation structures and activities of the EU, and therefore the priority of the *acquis communautaire*.²²² This process clearly promotes the role of Hungary and other Central European countries involved as a shield protecting the EU from migrants, rather than protecting refugees: out of the 54 recommendations of the 1997 Prague Conference just one urges states to sign international human rights instruments.²²³

2. *The Odysseus and Stop programmes*

In addition to the Phare programmes, which are general in character, the Odysseus and the Stop programmes are specifically focussed on illegal migration. Both ensure training through seminars and the exchange of information. The objectives of the Odysseus program are: to establish a framework for training, information, study and exchange activities, to improve the effectiveness of co-operation between the administrative bodies of the Member States in the area of asylum policy, to control movements across external borders of the Member States, and to harmonise immigration policy.

²²² Paragraph 12. of the main text of the Conference.

²²³ Namely, the 1950 *ECHR*, as well as the 1951 *Geneva Convention* and its 1967 *New York Protocol*, besides the 1979 *Convention against All Forms of Discrimination against Women*, and the 1989 *Convention on the Rights of the Child*.

The objectives of the Stop programme are: to establish a scheme for the development of co-ordinated initiatives on the combating of trade in human beings and the sexual exploitation of children, on disappearances of minors and on the use of telecommunications in facilitating these objectives.

IV.B.4. Restrictions on the entry of potential asylum seekers

The previous chapter of this paper revealed how EU practices narrow the full implementation of the Geneva Convention. It is effectuated, among other factors, by the implementation of the safe third country principle, and the establishment of subsidiary forms of protection to which the Geneva Convention does not strictly apply. Before analysing the implementation of the same measures amongst Hungarian conditions, the methods of blocking the legal or illegal physical access of potential asylum seekers to the determination procedure is presented below.

Besides the gradual closing of the routes leading from Hungary to the West, the number of migrants who actually have contact with Hungarian authorities also increases. Consequently, the government has applied a variety of measures to avoid the further increase of the number of migrants in the territory of the country. These measures include visa requirements against migrant sending countries, including those where refugees come from and the implementation of carriers' sanctions against those airlines that transport foreigners without a passport or visa to Hungary. These measures close the legal possibilities to enter the country even for those foreigners who have a genuine claim to seek protection. Illegal entry is also limited by the further closing of borders and the fight against human smuggling. The importance of this fight is that basically each person who enters Hungary illegally is a potential asylum seeker, as the only way for these people not to be returned lies in an application for asylum.

The number of asylum seekers would radically diminish in a hypothetical sealing of all illegal entry possibilities into Hungary, as most asylum seekers arrive illegally. This is shown by the following table, which also demonstrates that several foreigners who arrived to Hungary illegally do receive refugee status or the 'person authorised to stay' status.²²⁴

TABLE IV.1. MAJOR GROUPS OF ASYLUM SEEKERS, NUMBER OF ILLEGAL ARRIVALS AND RECONGISED CLAIMS IN 1999.

Nationality	Applications	Illegal arrivals	Refugee	Person authorised to stay
Afghan	2,238	1,962	127	223
Algerian	179	80	1	3
Bangladeshi	1,314	1,012	3	
Bosnian	322	116		6
Ghanaian	99	71	2	6
Indian	121	80		
Iraqi	543	271	60	52
Yugoslav	4,783	2,016	37	1,408
Nigerian	130	28	6	5
Pakistani	322	239		
Somalian	65	51	17	12
Turkish	91	29		2
World total	11,499	6,589	313	1,776

Source: Immigration and Citizenship Office

The above Table therefore reveals one of the major dilemmas of the institution of asylum in Hungary: there are very few legal ways to have access to the asylum process for many of those foreigners who have a good chance to be recognised by the state. Potential Geneva Convention refugees, similarly to illegal economic migrants, are pushed to travel illegally and seek the help of human smugglers. Passports are frequently not provided to members of persecuted minorities or to persecuted individuals, and visa requirements are strictly implemented against refugee sending countries. Thus, the legal travel, the physical access of potential Geneva Convention refugees to asylum is blocked. These conditions are basically contrary to one of stipulations of the 1951 Geneva Convention, which provides for "the right to seek and enjoy in other countries asylum from persecution".²²⁵

²²⁴ There is no separate data on the recognition rate of those who arrived illegally.

²²⁵ Art 14. 1951 Geneva Convention

As a 'refugee-friendly' aspect of the asylum system, there are no measures against migrants who arrived unlawfully to Hungary. This is in accordance with the Geneva Convention, which demands that "[t]he Contracting States shall not impose penalties, ... on refugees who... enter or are present in their territory without authorisation.."²²⁶ Persons who arrived illegally may equally apply for asylum.

The Hungarian example, where large numbers of asylum seekers enter the country illegally, is not unique in Europe at all. As it has been demonstrated in the previous chapter, the application for asylum for potential Geneva Convention refugees also becomes next to impossible in all EU countries due to visa controls for most refugee sending countries and to carriers' liability, who are prohibited to take passengers without a visa or passport.²²⁷

IV.B.4.a. Visa requirements

Hungary, at the time of the political transition, had no visa requirements against the countries of the vanishing communist world, including Cuba and Nicaragua. Finland, Austria, Sweden, Malta and Cyprus were the only non-communist countries whose nationals could enter Hungary without a visa before the political transition according to agreements signed in 1970, 1979, 1983, 1986 and in 1987 respectively.²²⁸ States of the former Soviet Union as well as those of the former Yugoslavia became successors of these agreements.

²²⁶ Art. 31. 1. 1951 Geneva Convention

²²⁷ The responsibility of carriers is set by Art. 60 of Law 1993:86 as amended by Law 1999:75.

²²⁸ Legal order Non. 40./1969 and 30./1978., Order of the Council of Ministers, No. 51/83. (XII.3.), 1/86. (I. 19.), and 71/87. (XII.10.)

A liberal trend has been unfolding since the first years of democracy. Hungary abolished visa restrictions against all West European states, the United States, Canada, and Israel in 1990 and 1991. South-American states, Uruguay, Argentina, Chile Costa Rica, Ecuador received the same preferences between 1990-1992, while the only African state on the free-entry list was South-Africa, after 1993. In Asia, South Korea (1991), Singapore (1994), and Japan (1997) eventually also received this preference.

Apart from the liberal trend to eliminate visa restrictions against nationals of several countries, a restrictive trend emerged after 1996 against the southern states of the former Soviet Union. Visa restrictions were implemented against Georgia in 1996, Kazakhstan, Uzbekistan, Kyrgyzstan in 1997, and against Azerbaijan in 1999.

There is strong resistance against the implementation of visa requirements for nationals of neighbouring countries and Russia, as it would lead to a sharp decrease in the economic ties in the region, a decline in trade and a loss of contacts with ethnic-Hungarians abroad. Thus, the implementation of visa requirements against those countries on the visa list applied jointly by EU states, such as Russia, Ukraine and Romania will be implemented during the last days of the pre-EU period.²²⁹ Different organs of the EU have expressed both understanding and discontent in regard to Hungary's reluctance to implement the visa requirements: "Brussels accepts that Hungary is looking for special solutions, but it is also expected that these plans take into consideration the security policies of the Union."²³⁰

The solution to the problem will probably be the extension of the foreign representation network in neighbouring countries, the establishment of new border checkpoints, and the

²²⁹ Oral statement of Gyula Kovács, head of the Border Transit Main Department, Border Guards National Directorate

²³⁰ *Népszabadság*, 1999, 24 March.

waiving of visa fees, so that access to Hungary would continue to be easy for all ethnic-Hungarians. Another solution would be the granting of a special status for those who have family, economic or cultural ties with Hungary, regardless of their ethnic background. Efforts have also been made to discuss a form of the 'national visa', which could be granted for Hungarians abroad, following the Portuguese example.²³¹

Visas are provided according to Gov. Order 1994:64 for citizens of visa-bound countries.²³²

The overwhelming majority of visas are provided by the foreign representations of Hungary and the National Police and the Border Guards.²³³ In-depth analyses of the visa provision system of Hungary are impossible, as full computerisation and the development of a clear database will be reached only during year 2000. However, major trends do demonstrate how visa policy, which used to be a tool for controlling the influx of Western tourists, became just a simple means of financial income for the country during and immediately after the transition, and how finally it was transformed to keep potential illegal migrants out from the country.

1. Visas obtained abroad

The bulk of visas are issued through the foreign representations of Hungary. The number of visas provided abroad was around 270.000 in 1996, 183.000 in 1997, 157,000 in 1998 and

²³¹ Those Portuguese who live e.g. in Brasilia or Mozambique without citizenship of the motherland may receive a visa, which enables them to enter Portugal. They have to acquire another visa in Lisbon to enter other countries of the European Union.

²³² Govt. Order 1994:64 of 30 April on the implementation of Law 1993:96 on the Entry, Immigration and Stay of Foreigners in Hungary.

²³³ Law 1999:75 Art. 15. Visas may be provided also by the Ministry of Interior and other authorities appointed by the Ministry of Interior.

150,000 in 1999.²³⁴ Almost 100 foreign representations of Hungary provide visas for citizens of other states. Visa applications have to be presented personally at one these foreign representations,²³⁵ which drastically decreases the application possibilities of those in countries without Hungarian representation, such as a great number of African and Asian countries. The requirement to prove the presence of the proper financial background further eliminates the chances of obtaining a visa.²³⁶

Visa applications received by foreign representations in countries that belong to the potential illegal migration zone are sent on to the National Police Headquarters in Budapest, where decisions are made about them. This takes the personal burden from the shoulders of the staff of the foreign representation, which could be significant due to the high ratio of returned applications about visa applications from these countries. This practice reflects the policy of the Ministry of Interior and Ministry of Exterior to decrease significantly the number of visas provided for citizens of countries with a high potential for sending illegal migrants.

²³⁴ Data provided by Dr. Péter Sárközy, head of the Visa Department of the Ministry of Exterior

²³⁵ Law 1993:86 Art. 11 (2).

²³⁶ As requested by Law 1993:86 Art 5. (2).

2. *Visas at the borders*²³⁷

The role of the Border Guards as visa providing agents decreased. During and after the political transition, they provided close to half a million visas a year. (430,653 in 1990 and 417,986 in 1991.) As fight against illegal migration increased, the role of the Border Guards, who provided visas in a few minutes or seconds to basically all applicants without consideration, was eliminated.

There is still a limited possibility for border guard authorities to issue visas at the borders.²³⁸ Visas today may be issued at the border only in exceptional cases, such as a major incident of a family member in Hungary, or when important state, social or economic considerations require so.²³⁹ Special international agreements ensure additional preferential treatment, e.g. for Turkish foreigners on a transit journey.

These regulations explain the decrease in the number of visas issued at border checkpoints, representing a gradual restriction from the period of the political transition until today. The majority of these visas were transit visas provided for Turkish citizens crossing the country in the Romania-Austria direction. For example, in 1996, out of the 32,483 visas provided at the borders, 25,165 were of this kind (in addition to 1,455 and 800 tourist visas for Japanese and Australians respectively). In 1997, 21,363 visas were issued at the borders, including 15,049 transit visas for Turkish citizens, and tourist visas for 984 Australians and 613 Japanese. The year 1998 resulted in a further decrease in visa supplying. That year, out of 10,179 visas, 6,896 were transit visas for Turkish citizens and Australians were provided 781 tourist and 440 transit visas. (Visa requirements against Japanese was abolished after

²³⁷ Source of all data at this section: National Border Guards Directorate

²³⁸ Law 1993:86 Art. 11. (1), (2)

²³⁹ Government Decree 1994:64 (IV. 30.) Art. 11.

1997.) In 1999, the bulk of the 14,362 visas issued at the border were transit visas for Turkish citizens (10,071), while Australians received 1,141 tourist and 624 transit visas.

These figures reveal that visas at the borders are provided mostly for Turkish citizens to transit Hungary usually towards or from Germany, and citizens of some other, usually wealthy states. Those migrants who are regarded as potential illegal immigrants basically don't even apply for a visa if they manage to reach the border, as policies applied in such cases are clearly restrictive in their case. Their application might be simply turned down, or they may be sent back to the Hungarian representation in the country they reached Hungary from. This explains why only 21 requests for tourist visa and 78 requests for transit visa were refused in 1999.²⁴⁰

3. *Airport transit visas*

An order of the Ministry of Interior²⁴¹ in 1998 provided for the implementation of transit visa requirements against those who change flights at the Budapest Ferihegy Airport without leaving its transit zone. The attachment of this ministerial order defines the countries whose nationals do not need a transit visa at the Budapest international airport.

The list of countries whose nationals need a transit visa²⁴² at the Ferihegy Airport is quite short: In Asia: Afghanistan, Bangladesh, Philippines, India, Iraq, Iran, Lebanon, Pakistan, Sri Lanka, Syria, Vietnam, and in Africa: Eritrea, Ethiopia, Ghana, Guinea, Cameroon, Congo, Liberia, Nigeria, Rwanda, Sierra Leone, Senegal, Somalia, Sudan, Zaire. Stateless persons also need a visa to transit at the Ferihegy Airport. Other, potentially migrant

²⁴⁰ Source: National Border Guards Directorate

²⁴¹ Order of the Ministry of Interior No. 35/98. VIII.7.

²⁴² This visa costs 20 USD for single transit and 30 USD for double transit. Order of the Ministry of Interior, 1998:35 Art. 5 (2)

sending countries of the Asian and African continent, such as Niger or Chad of are not on the list, as there are practically no persons arriving from there to the Budapest Airport. There may be exemptions from presenting this visa, if the foreigner has a valid visa to enter the countries of West Europe or has a valid residence permit to one of these countries.²⁴³ The implementation of this form of visa means another difficulty for migrants moving towards West European states, as today the international zone in Budapest is not a neutral location anymore where they may change flights easily.

4. *Control of false passports and visas*

A number of foreigners enter the country presenting false visas. This is assisted by the lack of a general on-line information system for border checkpoints, which would provide information on the visas issued by the foreign representations of Hungary. A Phare study confirmed that "as illegal migrants may present a valid passport issued in their own countries of origin at border checkpoints, the validity of the visa presented will be a decisive factor in the authorisation of entry."²⁴⁴ The control of visas will be of special importance, as "in a few years, a visa for an entry to Hungary will authorise the foreigner to enter other countries of the European Union, too."²⁴⁵ On these grounds, the EU experts suggested the on-line connection between foreign representations, the Ministry of Foreign Affairs, and the border checkpoints, so that the validity of the visa can be checked immediately. The implementation of this work started already in late 1999, with a prospective to join the new network to EU databases later on.

²⁴³ Order of the Ministry of Interior, 1998:35 Art. 2

²⁴⁴ Phare, 1998, p.28.

²⁴⁵ Ibid.

IV.B.4.b. Carriers' liability²⁴⁶

In addition to visa requirements, the sanctioning of air companies for transporting undocumented persons, including those without a transit visa, is another main method for keeping potential asylum seekers out of the country. The Alien Police Law of 1993²⁴⁷ resulted in the return of thousands of inappropriately documented migrants by air companies. Carriers, i.e. air companies, became obliged that year to cover the costs of return for all foreigners whose entry to the country was refused due to lack of a valid passport or visa. Air companies have to return the person to the country where s/he boarded the plane, or whichever country is obliged to take him back. In 1996, 320 foreigners, in 1997, 583, in 1998, 1,020 and in 1999, 846 inappropriately documented foreigners had to be returned by their transporters from the Budapest Airport. The 17% decrease from 1998 to 1999 is even more significant when considering the 4.4% growth in the number of passengers at the Airport, reaching 5,011,000 in 1999.²⁴⁸

According to another amendment to carriers' sanctions,²⁴⁹ if the return of the foreigner cannot be executed immediately, the cost of his stay is to be covered by the air-company. Thus, the accommodation and health care costs of those applying for asylum and stay in the country for several months is also to be paid by the air companies.

²⁴⁶ Art. 60. 1-4 of Law 1993:86 as amended by Law 1999:75

²⁴⁷ Art. 60. 1-2 of Law 1993:86

²⁴⁸ Data provided by dr. Emil Tímár, head of the Border Guards Ferihegy Airport Directorate's alien police department.

²⁴⁹ Art. 60. 3 of Law 1993:86 as added by Law 1999:75

In theory, the stipulations of this law also refer to other carriers, such as trains and water vehicles, but in practice, this sanction is never applied; those coming by train either enter the country at a border checkpoint, or are ordered to get off at the checkpoint. Undocumented foreigners coming by boat are simply not allowed to get off board.

An amendment to the above law of 1998,²⁵⁰ which entered into force on 1 September 1999, stipulated that the alien police authority may charge the carrier company up to 1 million HUF (4,200 USD) for each flight taking a foreigner or foreigners without the necessary documents for a legal entry to Hungary.²⁵¹ Out of all the 74 fines during September-December in 1999, of the amount of 17,500,000, some 30 fines were charged in September, which shows the fast reaction of air companies to further control the travel documents of all boarding passengers.

The present policy of the border guards is to fine air companies 100,000 HUF (420 USD) for each improperly documented passenger, but according to current practice, only about half of the air companies are sanctioned.²⁵² The policy followed by the head of the Alien Police Department of the Ferihegy Airport Border Guards is to sanction for obvious cases, e.g. when the visa has expired, or is not stamped in the passport, or when it could have been easy for the air company to realise that the visa or the passport of the foreigner was forged. The border guards do not sanction when specialised equipment is needed to recognise the forged character of a travelling document.

²⁵⁰ Art. 60. 4 of Law 1993:86 as added by Law 1999:75

²⁵¹ This amendment, in contrast to the original law, does not speak about train and fluvial transporters, but mentions only air carriers.

²⁵² Data provided by dr Emil Tímár, head of the Border Guards Ferihegy Airport Directorate's alien police department.

Altogether during 1999, after the entry into force of the law providing for the sanctioning of air companies on 1 September, the border guards fined the air-companies 74 times. The most frequently fined air company was Malév, the Hungarian airlines, with 36 cases when sanctions were applied against them.²⁵³ Most air companies, such as El Al, the Saudi Arabian and the Israeli airlines implemented more serious checks at the boarding points. Some companies, such as Air France, having paid the penalty on an inappropriately documented foreigner, charges the amount on the employee who was in charge of checking the passport of that person.

In 1999, some 25% of the sanctioned returns were implemented for the transport of West European or US citizens, who presented expired passports. These foreigners will continue to come, as these passports are not thoroughly checked before departure. Some 50% of penalties were charged for the transport of stateless persons from West European countries or North America, most often Albanians who wished to return for a visit in Albania, and had no transit visa. Their arrival will be more controlled in the future under the pressure of the sanctions. Only some 25% of the sanctions were charged after foreigners came from a visa-bound country, against whom the law was originally created. Thus, the original idea behind sanctioning air companies transporting improperly documented illegal migrants reached less expected results, namely the fining of transiting stateless persons going home for a visit and citizens of wealthy states with expired passports. The sanctions will eventually lead to a decrease in potential illegal migrants, although properly forged documents will be discovered only by border guards at the Budapest Airport.

²⁵³ Data provided by Dr Emil Tímár, head of the Border Guards Ferihegy Airport Directorate's alien police department. Malév has not paid the fines and appealed against them. Thus, the strict policy of the airport border guards may change after a ministry-level decision.

Passports are usually checked in the main terminal building. However, since 31 December 1999, the procedure of pre-screening has been implemented for passengers on flights from Cairo, Tunis, Damascus, Saint Petersburg, Istanbul and Tirana. Later on, passengers on the flights from Skopje, Sarajevo and Prague will also be pre-screened.²⁵⁴ Pre-screening means that travel documents of the passengers are examined by a border guard immediately after they leave the plane, in the presence of a representative of the air-company, before the normal passport control. With the implementation of pre-screening, the Border Guards avoid that passengers reach the transit zone of the airport, throw their passports away, and then refuse to declare which flight brought them to Budapest.

These stipulations prove to be efficient measures against illegal migration as they force air companies to prohibit the boarding of any undocumented persons. The number of undocumented West Europeans, who forget to check the validity of their passport at home, and whose passport is not checked at the airport of departure will not change considerably until the full EU accession. At the same time, less and less economic migrants and even less potential Geneva Convention refugees (a few dozen a year) will be able to reach Hungary by air in the future. Frequently, potential Geneva Convention asylum seekers, (especially women) are the ones who are not provided a passport by the national administration of their country of origin, while a visa is not ensured by the potential countries of asylum. Therefore, the transport of undocumented migrants many of whom are potential Geneva Convention refugees is limited by the practice of the carriers' liability.

²⁵⁴ Source: Human Rights Ombudsperson of the Parliament, 1999b

IV.B.4.c. Border control

Before 1989, Communist states had sealed the borders representing the Iron Curtain. Movements across borders were nearly perfectly controlled, especially on the Austrian-Hungarian border. After the political transition, the total control collapsed, due to the boom of travels in and out from the country. Today, instead of the fight against Westward migration of Hungarian nationals, the border guards have to protect all borders against illegal migration. On these grounds, beside the 362 km Austrian border zone, an additional 1,843 km border zone is protected with equal care, both at checkpoints and on the 'green border'.

1. Control at border checkpoints

The border guards examine all conditions of entry before the foreigner crosses a checkpoint. The customs control inspects if the financial requirements are met, i.e. if the foreigner has the adequate financial means to enter the country.²⁵⁵ The border guards also redirect the person to where he arrived from, or to the country that is obliged to take him back if the entry and residence ban against him is still valid. Similar measures are taken if the foreigner does not have a valid passport, a valid visa or a visa for further travel, or a ticket for the travel, e.g. for the train crossing the border.²⁵⁶ The car insurance, the mechanical condition of the car and its documents are also checked. Rejection may be appealed by mail at the local Border Guards Directorate, but this appeal has no suspensive effect on the rejection, and the foreigner is not allowed to enter the country.

²⁵⁵ Art. 5. of Law 1993:86

²⁵⁶ Art. 6. Ibid.

TABLE IV.2. REJECTION BY MAIN REASON IN 1997, 1998 AND 1999

Reason for rejection	1997	1998	1999
Entry and residence ban	3,117	2,480	2,817
Lack of valid passport	12,831	7,972	8,343
Lack of valid visa	5,102	4,698	4,377
Lack of visa for further travel	5,951	2,856	2,500
Lack of ticket for the travel	861	561	563
Necessary financial means	3,229	1,600	1,270
Lack of documentation for the car	1,184	903	1,161
Improper mechanical condition of the car	22,280	11,698	10,734
Lack of car insurance	117	86	116
Total	54,672	32,854	33,880

Source: Border Guards National Directorate

The high number of rejections is partly based on the improper mechanical condition of the cars, but another considerable part is due to the lack of valid passport, visa, or visa for further travel. All the figures dropped from 1997 to 1998 and somewhat stabilised in 1999, which show the higher level of preparedness of those who intend to enter Hungary. The following table shows the figures for the rejections by nationality during 1997, 1998 and 1999.

TABLE IV.3. REJECTIONS BY MAIN NATIONALITY GROUPS DURING 1997, 1998 AND 1999

	1997	1998	1999
Total rejections	54,672	32,854	31,881
Total European	52,714	29,848	28,753
Yugoslavian	4,070	2,771	2,058
Romanian	23,591	13,263	13,465
Ukrainian	16,242	8,471	6,599

Source: Alien Police Department of the National Headquarters of the Border Guards

Rejections have been implemented mostly against Romanian and Ukrainian citizens in the last two years. The dominance of rejections concerning Europeans is also to be noted. The statistics also indicates that illegal migrants from other continents rarely try to cross the border at checkpoints with a passport, but they chose the green borders or hide in vans.

The lack of computerisation and other equipment hinders the full control of entries at border checkpoints. Recognising this fact, the previously presented Phare feasibility study

on the 'Hungarian Border Control Programme'²⁵⁷ of 1998, proposed the immediate strengthening of two-two checkpoints on the Ukrainian and Yugoslav borders and at three checkpoints at the Romanian border. The Study also proposed as a further step, the strengthening of another 9 border checkpoints, with special regards to the detection of false and forged documents and the control of human smuggling by lorries and other vehicles.

The experts proposed the establishment of control systems with equipment already applied at EU checkpoints. This equipment includes UV lamps, magnifying-lamps, passport validity checking equipment, passport readers, CO2 probes, radar devices to check lorries with organic materials, endoscopes for inspecting closed parts of lorries, and night vision devices. The purchase of other devices such as video-surveillance-equipment, and heartbeat detectors proposed by Border Guards experts was postponed at the recommendation of Phare experts. The experts also advised the Hungarian Border Guards on the specifications and costs of such equipment and a strategy for eventually making all border posts meet the Schengen standards.

The second part of the Study on Communications and Information Technology proposed the complete replacement of the information flow system of the Border Guards, including the installation of IT technology at all border checkpoints. Additional recommendations 'focused on communications associated with mobile control, which enhanced inter-agency interoperability. Border Control Stations should receive IT equipment and mobile patrols issued with Notebooks. It was also recommended that a finger-print transmission service be introduced with a direct link to national police headquarters, an essential tool in the fight against illegal immigration.'²⁵⁸

²⁵⁷ PHARE, 1998.

²⁵⁸ Ibid. p.7.

The computerisation of all 57 border guards checkpoints between 1 September 1999 and March 2000 is the major step towards a total control of the validity of passports and visas at the borders.²⁵⁹ This system also checks whether the holder of the passport is under entry ban, or is wanted by the police. The 1.5 billion HUF investment enables a full registration of all those who leave or enter the country with a passport, i.e. not illegally through the 'green border'.

Those foreigners who arrive to the border checkpoint without being able to fulfil the necessary requirements do still have the possibility to apply for asylum, as opposed to those who would reach Hungary by trying to board a plane to Budapest in vain. However, they have to prove that there is a special danger waiting for them in the country they entered Hungary from. Otherwise, their claim is rejected on the grounds of their possibility to apply for asylum in the previous country, according to the 'safe third country principle'.

2. Control on the 'green border'

The full control of migration through the green borders is an enormous enterprise. A Phare study states that "with regards to green border management ... deficiencies exist through the system and Phare support cannot be expected to alleviate all such problems. However, with the limited funds available, it is recommended that "attention be given to enhancing mobility on the border through the provision of cross country patrol vehicles and to enhancing surveillance on the border through the purchase of man-portable observation systems which provide vision day or night and in all types of climatic conditions."²⁶⁰ The easiness of green border transit is partly due to the geographical fact that 515 km of the

²⁵⁹ Statement by Gyula Kovács, head of the Border Transit Main Department, Border Guards National Directorate

²⁶⁰ Phare, 1998, p.7.

Slovakian, Ukrainian, Romanian and Yugoslavian border is formed by rivers, where transit by boat is fast and difficult to control, especially if facilitated by local people.

3. *Present border control harmonisation with neighbours*

The silhouettes of a stronger co-operation with the border guards of neighbouring countries have been slowly emerging in the last few years. A significant event was the meeting of the ministers of Interior of Hungary and Austria during the spring of 1998, when the harmonisation of the border control systems of the two countries begun. The basis of the co-operation is a special EU standard mobile phone system,²⁶¹ which was introduced at the meeting. This phone system is planned to help guards on the two sides of the border to inform one another of any information useful in stopping illegal migrants.

In addition to this 'traditional' co-operation with the Austrian border guards, signs of similar joint efforts have also been revealed by the head of the Border and Alien Police Department of the Slovak Ministry of Interior. As he states: "Hungarian and Slovak border guards may harmonise the timing of their patrol walks... There is already a good relationship among these parties... We have a new philosophy: joint border protection is a lot better than separate action."²⁶²

Border control obviously has different developmental requirements for present and future EU borders as opposed to frontiers with non-EU countries. The uncertain accession position of Slovakia poses difficulties in defining the necessary investment and training on this rather long border zone. Probably, after the accession of Hungary, the border with Slovakia will be an external frontier just for a limited length of time.

²⁶¹ The TETRA digital mobile phone system

²⁶² Danyi, 1999, p. 10.

IV.B.4.d. Measures against human smuggling

Human smuggling, as presented in Chapter I., is a major factor that contributed to the rapid increase of the number of asylum seekers in 1998. That year, 5,045 out of the 7,118 asylum seekers arrived illegally to the country, while in 1999, the 11,499 asylum seekers included 6,589 illegal immigrants.²⁶³ As border control is strengthened, and the legal ways for several economic migrants and potential Geneva Convention refugees are being eliminated, the only possibility for moving across borders is through human smuggling.

This activity does not result in any serious punishment for human smugglers in Hungary.²⁶⁴ In 1996, 227 persons were arrested and charged with human smuggling, and 93 others were charged with complicity.²⁶⁵ In 1997, some 306 persons were arrested by the border guards for human smuggling, and in 1998, 558 persons.

The difficulty of charging smugglers is due to the usual lack of proof of actual involvement in this activity. For example, foreigners, afraid of revenge, do not identify the smugglers who helped them. Authorities have the same difficulty when intending to punish those involved in the sale a false travel documents.²⁶⁶ This further encourages people to be engaged in this activity. Moreover, sometimes border guards are also involved, due to the charming profitability of the enterprise.

²⁶³ Source: Office of Refugee and Migration Affairs.

²⁶⁴ According to the Penal Code (par. 218.), human smuggling is a criminal act. Prison sentence for members of human smuggling organised groups is 5-10 years, and 2-8 years for those who work with their commission.

²⁶⁵ Source: National Border Guards Directorate

²⁶⁶ For example, an Austrian citizen, who claimed to have found earlier the Austrian and German passports the police detected in his flat, was acquitted by the Court in 1999. BH, 1999/3.100.

Smugglers are getting more professional, better organised, and their groups have established more contacts through the borders. The law does enable authorities to expulse those from the country who organise actions of human smuggling.²⁶⁷ However, statistics reveal that only 5 persons were expulsed on these grounds in 1997, and just one in 1998.²⁶⁸ At the same time, just a handful of smugglers are really sentenced to imprisonment, and fines are insignificant compared to the than the lucrative gain from smuggling.

The entry into force of the *Law 1999:75 on the Regulations of Actions against Organised Crime and related Phenomena* has opened the way for a more effective fight against human smuggling. The law now authorises the notaries of local governments to close down any shops, restaurants and other entities related to trade, catering that are involved in human smuggling or human trafficking.²⁶⁹ The tightened control of the borders, backed by the radical new anti-smuggling legal regulations, being further developed with the intention to counterbalance the increasing pressure of illegal migration through human smuggling.

IV.B.5. The safe third country and the safe country of origin principles

Those migrants who reach the country's borders or enter its territories despite the previously described obstacles, may apply for asylum. In case of rejection, they may ask the revision of the decision, and this revision has a suspensive effect on their return. However, their application may also be rejected on the grounds of the 'safe country of origin' or the 'safe third country' principle. This rejection does not automatically lead to their actual expulsion from the country, as the lack of travel documents or the difficulties around the

²⁶⁷ Art. 23. (1) d. Law 1993:86

²⁶⁸ Source: National Police Headquarters

²⁶⁹ Art. 5. (2)

establishment of the identity of the foreigners may prohibit for a long period of time this action of the Police or the Border Guards in charge of the expulsion.

According to the 1997 Law on Asylum, a safe country of origin is:²⁷⁰

the assumption relating to the country of citizenship, or in the case of a stateless person, to the habitual residence, of the person seeking recognition as a refugee whereby that country applies the provisions of the International Covenant on Civil and Political Rights, the Geneva Convention, the International Convention against Torture and Other Cruel, Inhuman or Degrading Treatment of Punishment, and the Convention on the Protection of Human Rights and Fundamental Freedoms signed in Rome on 4 November 1950, and where through the legal system and the guarantee of lawfulness there may not prevail a threat of persecution for reasons of nationality, membership of a particular social group, political opinion, race, religion; or torture, inhumane or degrading treatment and which country enables independent national and international organisation to control and supervise the enforcement of human rights.

The definition of the safe third country is as follows:²⁷¹

a country which satisfies the conditions typical of a safe country of origin with regard to the applicant and where, prior to arrival at the territory of the Republic of Hungary, the foreigner had already stayed, settled down, travelled through or travelled on from, so that the applicability of the Geneva

²⁷⁰ Art. 2. d. Law 1997:139 on Asylum

²⁷¹ Art. 2. e. Law 1997:139 on Asylum

Convention for his claim had been recognised in respect of him, or he had had the chance to lodge a claim for the recognition of the applicability, but did not take advantage of that; provided that according to the rules and regulations of this country the foreigner cannot be sent back to the country where he would be exposed to persecution, torture, inhuman or degrading treatment.

Both definitions are similar to those of the European Union, as set in the Conclusions on Countries in which there is Generally No Serious Risk of Persecution²⁷² and the Resolution on a Harmonised Approach to Questions concerning Host Third Countries.²⁷³

According to stipulations of the Hungarian law, the Citizenship and Immigration Office refuses the recognition of a foreigner as a refugee if s/he arrived from a country that qualifies as a safe third country or a safe country of origin, *and* the applicant has not proved that regarding his case, that country does not comply with the above described definitions of safe countries.

There is no internal regulation at the Immigration and Citizenship Office concerning the application of this definition. Everyone who applies for asylum, regardless of which country s/he reached Hungary from and which country is her/his country of origin, participates in the full procedure. Therefore, arrival from Romania or Ukraine does not mean the automatic rejection of the application. As Yugoslavia is not a safe third country,

²⁷² 30 November and 1 December 1992. Criteria: A record for not producing refugees, observance of human rights, presence of democratic institutions, stability

²⁷³ 30 November and 1 December 1992. Fundamental requirements: life or freedom of the applicant must not be threatened, and s/he should not be exposed to torture or inhuman or degrading treatment, protection was already granted, or there was an opportunity to seek protection, effective protection against refoulement.

several asylum seekers apprehended within the country declared that they arrived via that country.

Some databases support the determination of whether the applicant came from a safe country of origin; the German Refugee Affairs Office keeps a list of safe countries and regularly sends it with country descriptions, within the framework of a bilateral agreement. The German Refugee Affairs Office also invites the staff of ORMA to visit to see the application of these materials as well as other dimensions of their activities. The UNHCR sends its country reports twice a year, the 'Refworld' edition, and provides complete country updates upon request. The Main Consulate department of the Ministry of Exterior provides concrete individual-specific information at request. Despite this background, given the time limits of the determination procedure, and especially in the case of countries of Africa, information usually arrives with several months backlog. This significantly adds to the slowing down of the recognition procedure.

The application of the principles of safe third country and the country of origin has not been the major reason for rejecting asylum claims in the last few years. According to estimates,²⁷⁴ some 15% of claims are rejected on the grounds of the safe country of origin principle, while another 5% were due to the safe third country principle. The rest of the claims are rejected on the basis that the person cannot prove their fear of persecution, and/or cannot prove his/her identity with documents, which is essential for the recognition.

Those foreigners who present their request for asylum at the border checkpoint first undergo an interview by the staff of the border guards. They have to prove that their stay in

²⁷⁴ Gabriella Szikráne Véghseő, chief consultant, Refugee Affairs Directorate

the country they reached Hungary from constitutes a special danger for them, and they therefore cannot apply for asylum there.

The implementation of the safe third country principle does not reach over the framework of the recognition procedure. There is no support for those whose rejection is based on the safe third country principle, and are returned back from Hungary, i.e. there is no guarantee that these foreigners really have an access to the asylum procedure. There is no legal regulation, which would demand that the safe third country or the safe country of origin would be noticed in cases of rejection on the grounds of a negative decision based on a safe third country or safe country of origin. Thus, the Hungarian legal system does not guarantee that the requirements

IV.B.6. The basis for recognition

The 1951 Geneva Convention, signed by Hungary in 1989, and also the country's obligation under the *acquis communautaire*, set some of the basic criteria for operating the asylum system. The Convention provides the refugee definition, determines the circumstances that exclude the foreigner from the procedure, and also details when the Convention ceases to apply to a recognised refugee. In addition to the other stipulations of the Convention, the observation of these regulations ensures a fair procedure. This subchapter presents the statuses Hungary offers for asylum seekers and then compares the exclusion and secession clauses to those of the Geneva Convention in order to reveal the restrictive trend in the application of the Convention.

IV.B.6.a. The statuses of protection

The Hungarian Law on Asylum offers three statuses, the actual refugee status, the 'temporary protected person' status, provided for entire groups of people, and the 'person authorised to stay' status. According to the law, a refugee is²⁷⁵

a foreign citizen or a stateless person who, owing to his persecution, to well founded fear of persecution for reasons of race, religion, nationality, membership of a particular social group or political opinion, having left the country of his nationality, or his habitual residence in the case of a stateless person, stays in the territory of the Republic of Hungary, and is unable or, owing to such fear, is unwilling to avail himself of the protection of that country; as well as the immediate family members²⁷⁶ of such a person, provided that the person concerned has been recognised as a refugee, at the request of the person concerned, by the refugee authority.

The inclusion of the 'safe third country' and the 'safe country of origin' principles are the most significant change in comparison to the stipulations of the Geneva Convention, which does not mention such an option for states in the procedure. As has been presented in the previous sub-chapter, it basically shifts the responsibility to decide over applications and to undertake the responsibilities stemming from the presence of recognised refugees from one country to another.

²⁷⁵ Art. 2. (a) of Law 1997:139 on Asylum

²⁷⁶ Immediate family member: spouse, minor child, and if the applicant is a minor, then the parents.

The other most apparent features of the Hungarian definition is that the applicant has to verify or substantiate that the provision of the Geneva Convention applies to him/her, which means an additional burden for the asylum seekers.²⁷⁷

The Law on Asylum offers subsidiary forms of protection as well. Accordingly, a 'temporary protected person' is²⁷⁸

a foreigner who arrived from an area, from where the members of the group taking refuge *en masse* due to foreign occupation, war, civil war or ethnic clashes, or the mass and gross violation of human rights going on in their country, were granted temporary protection in the Republic of Hungary on the basis of the decision of the Government and were recognised as temporary protected persons by the refugee authority.

The provision of this form of protection depends on the decision of the government. There is neither a legal nor a policy definition on the obligation of the government to decide to do so. The Kosovo crisis was a classic example of when all the conditions of the 'temporary protected person' definition prevailed for Kosovars seeking refuge in Hungary. Nevertheless, the government, similarly to other EU governments, did not open this status, probably in order to avoid the consequent pull effect.

The third 'person authorised to stay' status covers the recognition of a foreigner²⁷⁹:

who cannot be returned to his country temporarily because he would there be exposed to capital punishment, torture, inhuman or degrading treatment,

²⁷⁷ Art. 3. 1. 1951 Geneva Convention

²⁷⁸ Art. 2 (b) of Law 1997:139 on Asylum

²⁷⁹ Art. 2 (c) of Law 1997:139 on Asylum

provided that the person concerned has been recognised as a person authorised to stay by the refugee authority.

There is also a legally not defined 'fourth status': Some asylum seekers do not receive the 'person authorised to stay' status, i.e. the year-long renewable subsidiary protection, even if their return would lead to inhumane or degrading treatment. The reason is that although they meet the requirements of the status, they have no identification papers, which are required for access to this form of protection.²⁸⁰ These people are not returned, but stay without any legal status at the closed Community Shelters of the Border Guards. This regulation may meet international standards, as Art 31. of the Geneva Convention allows for the restriction of foreigners' movement until their status in the country is regularised. Present government policies indicate that modifications of legal regulations may provide even these undocumented migrants with the 'person authorised to stay' status.

The Hungarian asylum regime, with the elaboration of the present system of statuses is now fully aligned to the international practice, which²⁸¹

build on two different legal categories of persons in need of protection. On the one hand, there are individual refugees who are granted asylum because they are persecuted on the ground of their race, religion, nationality or membership of a particular social or political group. On the other, there is the broad majority of forced migrants who do not strictly fulfil these criteria but who cannot be sent back because of humanitarian considerations.

²⁸⁰ Art 11. (1) Government Decree 1998:23 (II.18)

²⁸¹ Lavenex, 1999, p. 13.

The elaboration of the legal structure of the other two subsidiary statuses of explicit temporary character, the 'temporary protected person' and the 'person authorised to stay' status, decreases the obligations of the state towards these foreigners. The provision of statuses other than the Convention refugee status restricts the rights of those fleeing persecution, as the Geneva Convention regulates exclusively the rights of recognised refugees.

IV.B.6.b. The regulations on exclusion

In addition to the actual definition of the term 'refugee', the stipulations concerning the exclusion clauses of the law on those refused protection *ab ovo*, and the cessation clauses on the suspension of the status also have significant influence on the number of recognised refugees. The following table shows well the differences between the exclusion clauses of the Geneva Convention and those of the three statuses. Although the lack of identity papers is not mentioned here as a reason for exclusion, in practice these people do not receive any status since they cannot prove their identity. The lack of identity paper is the dominant reason for refusing the provision of refugee status.

TABLE IV.4. THE EXCLUSION CLAUSES OF THE GENEVA CONVENTION, AND THOSE OF THE THREE STATUSES SPECIFIED BY THE LAW ON ASYLUM

Geneva Convention	Refugee status	'Temporary protected person' status	'Person authorised to stay' status
Does not apply in case of: ²⁸² <ul style="list-style-type: none">• protection received from non-UN agencies• holding equal rights as nationals in the country of residence• crime against peace, a war crime, a crime against humanity• serious non-political crime• act contrary to the purposes and principles of the United Nations	Recognition refused: ²⁸³ <ul style="list-style-type: none">• as at the Geneva Convention +• stay in Hungary violates the interests of national security• arrival from a country which qualifies as safe country of origin or safe third country• application on the same factual basis, for recognition as a refugee after the final refusal of an earlier application.	Recognition refused: ²⁸⁴ <ul style="list-style-type: none">• crime against peace, a war crime, a crime against humanity• serious non-political crime• act contrary to the purposes and principles of the United Nations• stay in Hungary violates the interests of national security	Recognition refused: ²⁸⁵ <ul style="list-style-type: none">• crime against peace, a war crime, a crime against humanity• stay in Hungary violates the interests of national security

In general, the exclusion clauses of all the three statuses include a reference to the interest of national security, which is only a cessation clause in the Geneva Convention. The complete exclusion of a foreigner from the procedure does not lead automatically to the return of the person to his country of origin as the alien police must investigate whether the person would be subjected to torture, or other inhumane or degrading treatment or punishment. The exclusion of those foreigners from the procedure who cannot be returned home due to the *non-refoulement* principle means that these individuals stay in Hungary without status.

In addition to the above exclusion clauses, the law includes other reasons that may lead to the refusal of the recognition of a foreigner as a refugee at the discretion of the authorities in charge:

²⁸² Art. 1. F. a-c. Convention Relating to the Status of Refugees. 28 July 1951.

²⁸³ Art 4 (1) of Law 1997:139 on Asylum

²⁸⁴ Art. 9 of Law 1997:139 on Asylum

²⁸⁵ Art. 13 of Law 1997:139 on Asylum

- the applicant is responsible for the circumstances resulting in persecution or his fear of persecution after leaving his country with the intention of getting asylum.²⁸⁶
- the applicant acts against his obligation to live at the place (usually a reception centre or a Border Guards Community Shelter) designated by the refugee authority
- the applicant does not co-operate with the authorities²⁸⁷
- the applicant does not subject himself to health test or medical treatment
- the applicant engages in employment, other than employment at the reception centre.²⁸⁸

These stipulations also exceed those of the Geneva Convention. The Geneva Convention does mention the obligation of a refugee to respect the laws of the host country,²⁸⁹ but these may not serve as a limitation to the access to the procedure.

IV.B.6.c. Regulations on cessation by withdrawal

The 1951 Geneva Convention defines the conditions when the protection of a foreigner under the Convention ceases to apply. The Convention thus does not allow for the withdrawal of the refugee status, but recognises that it loses effect if the recognised refugee

²⁸⁶ Art. 4 (2) a) of Law 1997:139 on Asylum

²⁸⁷ The foreigner is obliged: "to provide his personal details, to deliver his documents, to tolerate his fingerprints and a photograph of his face being recorded, to have his luggage, clothing and vehicles inspected, to give an account of his property and income." Art 16 (b) of Law 1997:139 on Asylum

²⁸⁸ Art. 4. (2) Law 1997:139 on Asylum

²⁸⁹ Article 2. 1951 Geneva Convention - General obligations: Every refugee has duties to the country in which he finds himself, which require in particular that he conform to its laws and regulations as well as to measures taken for the maintenance of public order.

enjoys the protection of the country of his original or his new nationality, or the circumstances, which gave the reason for his recognition ceased to exist.²⁹⁰

The following table shows the legal basis for the withdrawal of the three statuses applied in Hungary, in comparison to the cessation clauses of the 1951 Geneva Convention.

²⁹⁰ Art. 1. C of the 1951 Geneva Convention

TABLE IV.5. THE CLAUSES FOR THE WITHDRAWAL OF THE THREE STATUSES AS SPECIFIED BY THE LAW ON ASYLUM

Geneva Convention	Refugee status	'Temporary protected person' status	'Person authorised to stay' status
<p>Status ceases to apply:²⁹¹</p> <ul style="list-style-type: none"> · if the recognised refugee enjoys the protection of the country of his original or his new nationality · the circumstances, which gave the reason for his recognition ceased to exist 	<p>Status is withdrawn:²⁹²</p> <ul style="list-style-type: none"> · as in Geneva Convention · if crime against peace, a war crime, a crime against humanity, a serious non-political crime, or an act contrary to the purposes and principles of the United Nations was committed by the refugee · conditions of recognition did not prevail the time of the decision · conduct of refugee violates an interest of national security · refugee renounces his status in writing 	<p>Status is withdrawn:²⁹³</p> <ul style="list-style-type: none"> · conditions of recognition did not prevail the time of the decision · stay of refugee violates an interest of national security 	<p>Status is withdrawn:²⁹⁴</p> <ul style="list-style-type: none"> · reason for the stay ceases to exist · recognition has been granted by the omission of actual facts which were significant for the recognition · the foreigner breaks his obligation repeatedly or seriously to respect Hungarian laws
<p>Refugee may be expelled - de facto withdrawal of the status:</p> <ul style="list-style-type: none"> · on grounds of national security or public order²⁹⁵ · the foreigner is convicted by a final judgement of a particularly serious crime²⁹⁶ 	<p>Status may be withdrawn:²⁹⁷</p> <ul style="list-style-type: none"> · recognition has been granted by the omission of actual facts which were significant for the recognition · the refugee has been sentenced for enforceable imprisonment for committing intentionally an especially serious crime, which is punishable by -at least - 5 years imprisonment according to law 	<p>Status may be withdrawn:²⁹⁸</p> <ul style="list-style-type: none"> · the foreigner leaves or attempts to leave the country without permission 	

The refugee status also terminates if the foreigner is granted Hungarian citizenship or an immigration permit,²⁹⁹ and the 'temporary protected person' status terminates when the

²⁹¹ Art. 1. C. 1951 Geneva Convention

²⁹² Art. 6. Law 1997:139 on Asylum

²⁹³ Art. 11. Ibid

²⁹⁴ Art. 13. (3) Ibid

²⁹⁵ Art. 32. (1) 1951 Geneva Convention

²⁹⁶ Art. 33. (2) Ibid

²⁹⁷ Art. 7. Law 1997:139 on Asylum

²⁹⁸ Art. 12. Law 1997:139 on Asylum

period of protection expires, the foreigner is granted refugee status or an immigration permit, or the person has left the country definitely.³⁰⁰

Similar to the exclusion clauses, the cessation clauses also go beyond those of the 1951 Convention. Here the protection of national security leads directly to the cessation of the status, while the Geneva Convention leaves the withdrawal of the status optional.

The optional cessation clause of the 'temporary protected status' does not exclude the hypothetical danger that the protection of these foreigners who try to move on to richer countries to the West is withdrawn, and either they continue to stay in the country without status, or their return is effectuated.

The third cessation clause of the 'person authorised to stay' is especially uncertain, as it states that the status terminates if the foreigner breaks his obligation repeatedly or seriously to respect Hungarian laws.³⁰¹ Basically, for a repeated minor offence, the status of the foreigner is automatically withdrawn. Therefore, the protection is fragile, compared to the seriousness of the protection demanded by the 1951 Geneva Convention.

IV.B.7. Detention of asylum seekers

Law 1993:86 on the *Entry, Stay and Immigration of Foreigners in Hungary* allows that a foreigner may be assigned a compulsory place of residence until.³⁰²

his/her identity has been established;

²⁹⁹ Art. 10. Law 1997:139 on Asylum

³⁰⁰ Art. 10. Ibid.

³⁰¹ Art. 13. (3). c Ibid.

³⁰² Art. 43 (1) Law 1993:86 on the *Entry, Stay and Immigration of Foreigners in Hungary*

- the conditions of his/her stay have been legalised;
- the conditions of return have been guaranteed, if he/she has been given an expulsion order;
- expulsion can take place, but may not be executed due to the non-refoulement principle.³⁰³

The compulsory place of residence can be either a flat, a shelter offered by relatives, any individual, charity organisations, or a facility, such as a rented flat or a hotel paid by the migrant.³⁰⁴ In case there is no capacity for any of these solutions, or when this seems to be reasonable for public security reasons, a Border Guards Community Shelter is specified as the compulsory place of residence. This is basically the legal basis for the detention of asylum seekers at Community Shelters; the legal possibility to assign a compulsory place for them, as well as the lack of alternative accommodation and public security reasons.

In 1998, 16,290 foreigners were assigned a compulsory place of residence.³⁰⁵ Out of them, 11,488 persons, some 70%, had to stay at a Community Shelter.³⁰⁶ In 1999, out of the

³⁰³ Art. 43 (1) Ibid.

³⁰⁴ Art. 43 (2) Ibid.

³⁰⁵ Art. 43 (3) of Law 1993:86 as amended by Law 1999:75.

³⁰⁶ The discretion of the authorities is wide. The financial background is a major factor at the decision, but in practice, the availability of travelling documents and the previous records of the migrant are also important when deciding about allowing a compulsory place of residence other than a Community Shelter. In addition, foreigners frequently have difficulties in renting out a flat, as landlords are not willing to let apartments to foreigners - or, in order to avoid taxes, landlords do not sign any official paper, which would be needed to prove authorities the adequacy of accommodation arrangements outside the Shelter. Therefore only the very

13,849 persons assigned a compulsory place of residence, 10,280 foreigners, i.e. 74% stayed at a Community Shelter. When the compulsory place of residence is not a Community Shelter, the Alien Police Department in charge defines the conditions of leaving the compulsory place of residence, (usually just for 12 hours period with an obligation to return for every night) and also monitors the observation of these rules.

Detention in Community Shelters in itself is not against international human rights regulations. The ECHR allows the "lawful arrest or detention ... of a person against whom action is being taken with a view to deportation..."³⁰⁷ However, the form of detention may constitute inhuman and degrading treatment, especially when it is prolonged over an excessive length of time. As it will be demonstrated later on, detention at the Community Shelters does lead to inhuman and degrading treatment partly due to the physical environment but also due to the psychological pressure on the persons staying there.

IV.B.7.a. The Community Shelters of the Border Guards

1. Basic statistics about the Community Shelters

Eight out of the 10 Border Guards Directorates have (December 1999) a Community Shelter. Illegal migrants apprehended by the Border Guards or by the Police, as well as rejected asylum seekers waiting for return are kept here. As these facilities are closed, some migrants find the only solution to move on in applying for asylum, and to be moved to an open Reception Centre run for asylum seekers. At the same time, many of them remain

rich who can pay hotel accommodation or those with friends or relatives in Hungary can live outside the Shelters.

³⁰⁷ Article 5 para. 1. F.

here, as Reception Centres are full, while the 1300 person holding capacity of Shelters is filled to 80% these days.³⁰⁸

The turnover is high at Community Shelters, since 11,448 persons stayed in these Shelters during 1998, filling the 1,300 persons holding capacity. It means that foreigners stay just over 5 weeks at the Shelters on average.³⁰⁹ However, on an individual basis, some foreigners stay at the Shelter for several years, while others leave in a few days. In 1999, the number of foreigners at the Shelters reached 12,728. The holding capacity shows a fragile aspect of the system: in case of larger number of arrivals, the capacity of the Community Shelters is not sufficient. For example, when some 300 Asian persons, mostly Bangladeshi migrants were discovered in a clandestine shelter run by smugglers in July 1999, national co-ordination was required to distribute them, and extra facilities and empty military barracks had to be opened to accommodate them.³¹⁰ At the same time, these Shelters are not filled always; in January 2000, the 1,032 holding capacity was filled only up to 733.³¹¹

2. *Asylum seekers at the Community Shelters*

It is always the alien police authority in charge that decides where the foreigner has to stay. Illegal migrants in theory stay at the Community Shelter of the Border Guards that apprehended them, if the Shelter is not full. In the case of the Police, the county-level Headquarters sign agreements with Border Guards Directorates on the allocation of foreigners at Community Shelters. If the Shelter is full or the Directorate has no Shelter,

³⁰⁸ Source: National Border Guards Directorate

³⁰⁹ Source: National Border Guards Directorate

³¹⁰ Mai Nap, 1999, p. 16.

³¹¹ Source: National Border Guards Directorate

the foreigners are transferred to a Shelter of another Directorate. If Shelters are made up of more than one building, usually those who stay for longer periods or children and elderly people stay at the better premises.

3. *Community Shelters as detention centres*

Practice for authorising the leaving of the Shelters has been highly controversial for a long time, and is probably the most infamous symbol of the asylum and migration phenomena in Hungary. The restrictive conditions for leaving the Shelters were first specified by an agreement between the Head of the National Police and that of the National Border Guards, signed on 12 August 1998. This agreement, similar to the legal regulation following it, prevented illegal migrants from leaving the Shelters and trying to cross the borders to the West repeatedly.

The agreement was signed - probably not coincidentally - during the second half of 1998, when Austria was responsible for the EU presidency, and declared the management of illegal migration to be one of its major objectives. Those with identity papers at the Community Shelters could leave the facility if their documents were accepted as genuine, and if they had always returned previously on time. One day leaves to the nearby city or village were approved by the directors of the Community Centres. If a foreigner wished to travel anywhere else or leave the Shelter for a longer period, the authority in charge of his case decided. Those without identity papers could leave only for medical care in a hospital and to visit the diplomatic representation of their country of origin.

However, sometimes even those undocumented foreigners whose return to the Shelter seemed probable, i.e. those who seemed reliable, were occasionally issued a day pass at the discretion of the staff at the authority in charge. In contrast, allowing leaves at some Community Shelters was rare for documented migrants too, where local policy dictated a

more restrictive approach. The above measures were enforced to ensure that illegal migrants who had no possibility to live outside Border Guard Shelters should be constantly behind bars, or at least under control until they left the country.

The *Law against Organised Crime and Related Phenomena*, which entered into force on 1 September 1999, extended this control even to those with documents, but limited the maximum stay at any compulsory place of stay (including Community Shelters) to 18 months.³¹² Having completed the 18 months, the foreigner is now assigned another compulsory place of residence.³¹³ The thus regulated but still rigid character of these camps continues to decrease the flow of migration Westward, and functions as a deterrent measure against those in migrant-sending countries who consider trying their chances through Hungary.³¹⁴

Hungarian law emphasises that the assignment of a compulsory place of residence does not classify as custody or as detention.³¹⁵ The assignment of a compulsory place of residence itself is really not custody, but when this place is a now fully closed Border Guards Community Shelter, the fact of detention cannot be ignored. It is not by chance that this form of detention of illegal migrants and asylum seekers, some of whom are potential Geneva Convention refugees, is the most neuralgic area of the Hungarian asylum system.

4. *Brief overview of the financial inefficiency of the Community Shelters*

³¹² Art. 31 (5) of Law 1993:86 as amended by Law 1999:75

³¹³ Art. 43 A/1. of Law 1993:86 as amended by Law 1999:75

³¹⁴ The double effect of closing the Community Shelters (i.e. preventing migrants from moving on and deterring migrants who would think about coming to Hungary) has been criticised by the Hungarian Helsinki Committee. Hungarian Helsinki Committee, 1999, p.3.

³¹⁵ Art. 43. (1) a. Law 1993:86

The Community Shelters, in addition to the controversies that NGOs and media present to the public, raise efficiency questions as well, due to their costly operation. There are only two larger Community Shelters with a 500 and 400 persons holding capacity.³¹⁶ The rest have a 72-persons holding capacity on average, which is a small size for economical operation. The person/day cost is some 3,000-4,000 HUF (13-16 USD) and the ratio of staff/migrants is 1:3.2 at the Community Shelters, where most staff are needed simply just to prevent any attempt of the foreigners to escape. This means that the Border Guards employ one professional border guard as a prison guard for every three migrants. In comparison, the open facilities run for asylum seekers cost some 1,500 HUF (6 USD) per day, while the staff/migrant ratio is 1:9.4.³¹⁷

IV.B.7.b. Life at the Community Shelters

Statistics reveal shocking facts about the Border Guards Community Centres. These statistics prove that the detention of illegal migrants and asylum seekers is against Hungary's international obligations. The great number of 'special events' at these facilities is the first fact that shows the pressure put on foreigners here by the rough conditions. For example, between July 1998 and February 1999 the border guards registered 896 persons who escaped, 9 attempts of suicide with actual fatality, and 995 people participated in some form of hunger strike.³¹⁸

Former social and community life comes to an end at these community centres, and people of different religions, races, sexes and ages, and of different political opinions have to share

³¹⁶ The ones in Szombathely and in Nyirbátor.

³¹⁷ Source: Hungarian Helsinki Committee, 1999, p.2.

³¹⁸ Source: National Border Guards

the same close premises. The lack of adequate living space often leads to quarrels, or even fights.³¹⁹ Hunger strikes, where even children participate, are not at all unknown at these shelters.³²⁰ There are serious communication problems with the guards as very few of them speak a foreign language. In addition, the staff receive simply border guards training and have little knowledge about social work in a prison-like environment.

The 1999 Report of the European Commission³²¹ drew attention to the bad conditions at these camps. The renovation of these Community Shelters is gradually being realised. According to a study of the National Border Guards Directorate,³²² 1,7 billion HUF (7.1 million USD) is needed for the renovation of the Community Shelters, which is expected to be covered by Government support during 1999-2001.

1. Reports on the life conditions at Community Shelters

The UN Committee Against Torture in a Statement issued during 1998 expressed its serious concern about the overcrowded conditions at the Community Shelters, as well as

³¹⁹ Just two examples: Early April 1998, at the Szombathely Community Centre 96 Bangladeshi against 13 Afghans and 15 persons from Sri Lanka engaged in a fight over the distribution of soap. The intervention of border guard officers lead to a fast withdrawal of the parties, but the event well shows the frequent tension between nationalities. Incident reported in: Pekarek, 1999, p. 9. Late 1999, the Community Shelter of Szombathely was burnt down by a group of Afghans, who wished to give voice to their discontent about the bad conditions at the Shelter.

³²⁰ In November 1999, 78 Afghans, including 23 children refused to eat at the Community Shelter in Nyírbátor. Their action formed part of a larger hunger strike in 3 Community Shelters, with more than 300 participants. Source: *Népszabadság*, 11 November, p.5.

³²¹ European Commission, 1999, p. 50-53..

³²² National Border Guards Directorate, 1999b, Attachment 6.

about the lack of access to fresh air, and the absence of education and proper sanitary conditions.³²³

The regular reports of the Human Rights Ombudsperson on asylum and migration issues provide the most useful insight to the analyses of the situation at the Community Shelters. These reports base their inspections on rights as enumerated in the Hungarian Constitution, but also include the rights given in international instruments. These reports have no direct influence on the legal system, but bring the attention of the wide public to the human rights breached, they form a point of reference for political debates, and they initiate concrete changes in the legal system.

A report issued in June 1999 ordered the closure of a building of one of the Community Shelters of the Kiskunhalas Border Guards Directorate, on grounds that it was not suitable for human beings to stay there for a long period of time.³²⁴ These shocking findings, although they only partly characterise the situation of all the Shelters, provide insight to the conditions of life at these establishments.³²⁵ The study found that out of the 104 foreigners at the Shelter, only 9 had the right to visit the city. (This was before the implementation of the Law 1999:86 which completely sealed these facilities.) The indefinite length of this type of prison life - which is now maximised in 18 months - was the greatest factor in the bad psychological condition of the foreigners. A man who had been at the Shelter for a year

³²³ Statement issued on 19 November 1999.

³²⁴ Human Rights Ombudsperson, 1999.

³²⁵ Another report of the ombudsman on the conditions at the Community Shelter of the Balassagyarmat Border Guards Directorate revealed similar conditions. Here again, one of the premises had no separate showers or toilets for men and women, and no opportunity to walk in fresh air. Human Rights Ombudsperson, 1998a.

showed clear symptoms of the ‘prison psychosis’ including unrealistic fear of death, as well as vandal and aggressive behaviour.

People with contagious diseases shared the same bathroom with the others. People had no place to put their belongings in. Food sometimes was made of pork despite the presence of many Moslems at the Shelter. The foreigners had no regular possibility to walk outside, just when the border guards could find some time for escorting them for a walk in the court. The border guards were always kind with the aliens, and there were no complaints against them. The conditions were also frightening for the border guards, who had worries about getting infected with a disease. Some of them, despite their request, were not provided with vaccinations against the diseases detected at the Shelter. These circumstances do constitute inhuman and degrading treatment, prohibited by international human rights law.

2. *Human rights breached*

The different studies of the Ombudsperson found that the lack of proper cleaning, accommodation and health care facilities are against Art. 70 D(1) of the Constitution, which provides for the right to the highest level of physical and mental health, which third generation social right is not covered by the international obligations of Hungary, but they constitute a breach of the Constitution. Moreover, the study found that these conditions also amount to the violation of the constitutional right to human dignity.³²⁶ According to the studies, the parallel alien police hearing of migrants in the same room, when they have to detail even the most intimate details of their flight, is against Art. 54 (1) of the Constitution on the right to human dignity. This infringes also on the ICCPR, which states that “all persons deprived of their liberty shall be treated with humanity and with respect for the

³²⁶ Art. 54 (4) of the Hungarian Constitution

inherent dignity of the human person.”³²⁷ Another study³²⁸ that resulted in the closure of a Community Shelter even found that the living conditions constituted a form of inhuman and degrading treatment, which is prohibited both by Art. 54. of the Hungarian Constitution and international human rights instruments, such as the ICCPR and the ECHR.

The studies found that food was not always prepared according to the rules of the Moslem religion, and sanitary conditions were also against their religious practices. Foreigners of this faith are limited in practising their religion freely in this sense.³²⁹ This is against the relevant stipulations of the ECHR and the ICCPR, which protect the freedom to observe one’s religion or beliefs in practice.³³⁰

3. *The rights of the child*

The lack of teachers or other personnel to deal with the children as well as their forced accommodation at these Shelters with other people contradicts the ICCPR, the ECHR and the Hungarian Constitution according to the study of the Ombudsman.³³¹ Article 67 (1) of the Constitution, which states, that “every child shall have the right to enjoy the protection and care, provided by his family, by the State and the society, which is necessary for a proper physical, mental and moral development.”

³²⁷ Art. 10.(1) of ICCPR

³²⁸ Human Rights Ombudsperson, 1998b.

³²⁹ Art. 60 (2). of the Hungarian Constitution

³³⁰ Art. 18(1) of ICCPR

³³¹ Human Rights Ombudsperson, 1998b.

The condition of the stay of children at the Community Shelters also constitutes an infringement of the Convention on the Rights of the Child. Article 37. of the Convention states, that "[t]he arrest, detention or imprisonment of a child shall be in conformity with the law and shall be used only as a measure of last resort and for the shortest appropriate period of time." However, children often do stay at these facilities, many for an extended period of time, and the demand of the Convention that the best interests of the child has to be a primary consideration is not observed. The rough conditions at the Shelters are against the rights of the children to the enjoyment of the highest attainable level of health, as demanded by the same Convention.

4. Other rights violated

The lack of improper storage facility for personal belongings is against the right to property,³³² mentioned in Art. 1. of Protocol 1. of the ECHR. The lack of national legal regulation on the left behind property is against the principle of rule of law, the constitutional state. It is worth mentioning that the studies of the Ombudsperson found that the low remuneration of the job performed by the border guards, who do an extremely difficult job, is against the right to an income corresponding to the amount and quality of the work performed.³³³ The extremely low quality of their working conditions are against the right to the highest level of physical and mental health, a constitutional right in Hungary.³³⁴

³³² Art. 13 (1) of the Hungarian Constitution

³³³ Art. 70/B. (3) of the Hungarian Constitution

³³⁴ Art. 70 D. (1) of the Hungarian Constitution

IV.B.7.c. Efforts to solve the detention crises

The Border Guards have repeatedly tried, or showed willingness to improve the situation. A paper of the Border Guards on the related measures reported that a national level co-ordination had been initiated to ensure the even distribution of migrants at the Shelters; that human rights NGOs, legal representatives had been provided with an easier access to meet the migrants; that during Christian and Moslem feasts special measures had been adopted, such as the organisation of celebrations, distribution of gifts, etc., and with the contribution of Hungarian religious organisations short training courses had been organised; and that psychologists had been invited to ease the tensions related to the lack of free movements and the lack of activities.³³⁵ The staff working with migrants had been given a 10% increase in wages, and efforts had been made to improve the sanitary and accommodation conditions of migrants, and that of the storage of personal belongings.

However, the management of conditions at Community Shelters will continue to be a difficult task for the Border Guards. The president of the Human Rights Committee of the Hungarian Parliament expressed her feeling that as Hungary is poor, EU support for the amelioration of the conditions at these Shelters would be welcome.³³⁶ This underlines that the improvement of life at these Shelters is not a priority for the state, despite the continued pressure from human rights initiated media reports on the absurdity of keeping people, including children and the aged, in prison-like circumstances without court decision for an action (illegal crossing of borders or illegal stay) which does not classify as a crime. The less outspoken conviction of the authorities involved is that improvement of the conditions

³³⁵ National Border Guards, 1998.

³³⁶ Statement by Kósáné Kovács Magda, chairperson of the Human Rights Committee of the Hungarian Parliament. Viewpoint mentioned in early 1999.

at these facilities would lead to an increase of immigrants who arrive to the country, as the deterrent factor would cease to exist.

Migratory pressure will not cease, therefore arriving foreigners will be kept at these facilities to meet EU requirements concerning the limitation of illegal migration to the West. Moreover, as the above summarised Border Guards report commented, the staff had been reorganised in order to improve the quality of stay at the Shelters. As more border guards started work with the foreigners at the Shelters, the number of border guards at the frontiers decreased and therefore the number of illegal immigrants increased.

IV.B.7.d. Alien regulatory custody

If an asylum seeker repeatedly breaches the rules concerning the stay at the assigned compulsory place of residence, s/he may be taken into alien regulatory custody, similar to other illegal migrants. According to the law, a foreigner may be taken into alien police custody, if s/he leaves the designated place of residence, hides from the authority to hinder the execution of expulsion, is leaving a penal institution, or commits legal offences or crimes during the legal force of expulsion.³³⁷ The foreigner may be kept in custody for maximum five days, but with a court decision this can be continued until the foreigner's departure from the country.³³⁸ The maximum period for alien police custody is 18 months. If the foreigner is not returned home during that period, a compulsory place of accommodation is assigned to the foreigner.³³⁹ Alien regulatory custody is applied rarely,

³³⁷ Art. 36 (1) d. Law 1993:86 as amended by Law 1999:75

³³⁸ Art. 37.(3) Ibid. A monthly court revision is required of the need of the further custody if the detention exceeds 30 days.

³³⁹ Art. 36 (8). Ibid

mostly in the case of foreigners who repeatedly break out from Community Shelters, or who have a bad disciplinary record.

In 1997, 220 persons, and in 1998, 436 foreigners faced custody by the alien police, waiting for return. These foreigners are kept at the custody of one of the county level or Budapest Police Headquarters for 30 days, and if they still can't be returned, they are usually transferred to the Nagyfa penal institution. These foreigners are kept separately from criminals during the whole length of alien police custody.

The holding of foreigners in alien police custody constitutes major problems concerning the rule of law. Custody both at the county level facilities and at the Nagyfa penal institution are excessively severe punishment compared to the illegal activities committed. In addition, those at the penal institution have far less favourable conditions than those at the country level custodial facilities as far as keeping contact with the outside world (visitors, receiving parcels, etc.) is concerned. Different punishment for the same illegal act is also against the principle of the rule of law.

IV.B.8. The return of rejected asylum seekers

The return of asylum seekers is suspended for the complete length of the recognition procedure. After the final rejection of their application, they return to the authority, which apprehended them, i.e. either the Border Guards or the Police. If the rejected asylum seeker had not been under the supervision of either of these authorities before the asylum procedure, then the Police initiate the alien police procedure after the final rejection of the asylum claim.

IV.B.8.a. Expulsion of aliens

Both the National Police and the National Border Guards are authorised to perform alien

police functions by Law LXXXVI of 1993 on the *Entry, Stay and Immigration of Foreigners in Hungary*.³⁴⁰ They perform the alien police procedure, which results in the expulsion order. This arrangement rarely may include an element of risk, as the Police or the Border Guards may contact the foreign representation of an asylum seeker during the asylum procedure in order to acquire the necessary travel documents for the return. Application for asylum does not suspend the procedure, only its implementation. Asylum seekers may ask for the revision of a negative decision, which suspends return, except for the airport procedure.

An entry and residence ban has to be issued against the following types of aliens: those who have been expelled from the country, those performing activities against the constitutional order of the country, members of terrorist groups, those organising travel of others into the country without the conditions for the continuation of the journey into a third country, human smugglers, those committing a criminal action punishable for more than 5 year imprisonment, and those whose entry or stay in Hungary is against the international obligations of the country.³⁴¹ In addition, an entry and residence ban can be issued for aliens having violated the entry and stay of the aliens regime, illegal alien workers or aliens convicted of fiscal violations.³⁴² The entry and residence ban is to be

³⁴⁰ Art. 47. (1) of Law 1993:86 as amended by Law 1999:75 states that the return journey of the foreigner is to be covered by the air company, as well as the costs of the foreigner's stay in Hungary, if return cannot be executed immediately. In addition, the air-company can be charged up to 1 million HUF (4250 USD) for each flight that carries an undocumented migrant.

³⁴¹ Art. 23 (1) a- f Ibid

³⁴² Art. 23 (2) a. and b. Ibid

ordered either by the Police Headquarters or by the Border Guards Directorates and is presented as a part of the expulsion order.³⁴³

The expulsion order is the official document for the implementation of expulsion. In 1998, 22,553 and in 1999 18,898 foreigners were expelled from the country.³⁴⁴ This figure reveals that illegal migration effected the country even more than during previous years. The figure was 2,700 in 1993, 15,600 in 1994, 17,600 in 1995, 14,000 in 1996, and 15,636 in 1997.³⁴⁵ Expulsion dominantly has been ordered because of the breaching the rules of exit and entry of the country. For example, in 1998, the majority, 16,554 persons were expelled because of breaching the rules of exit and entry of the country, while an additional 3,495 persons were found guilty for illegal employment or income, and 1,307 for endangering public safety.

Out of those persons expelled from the country, the proportions are important to note; 10,152 foreigners were Romanian and 7,129 were Yugoslav citizens in 1998. In 1999, 11,269 Romanian citizens were expelled, but only 2,583 Yugoslavs, which shows the ban on expulsions of Kosovars. During these two years, the other major groups of expelled

³⁴³ Art. 24. (1) a. and b. Ibid

³⁴⁴ The danger of receiving an expulsion order with an immediate effect urges those outside closed facilities to disappear. For example, in open Reception Centres after a negative decision on asylum applications, the majority disappears, with the exception of the elderly and unaccompanied minors. The bulk of the disappeared are apprehended later again by the Police in the country or by the Border Guards at the Western borders, and may apply again for asylum under a different name.

³⁴⁵ Source: SOPEMI, 1998, p. 118.

foreigners were Ukrainians, Afghans and Chinese.³⁴⁶ These figures reveal that most illegal migrants are from Romania or Yugoslavia, and are caught at the Austrian border during illegal border crossing. The expulsion order defines the period during which the foreigner has to leave the country, usually one or two days, or is fixed according to the date of the return flight.

There is the possibility to appeal against this decision, but it has no suspensive effect on its execution, if neither the foreigner nor his family, or the person who invited him have financial resources to cover the costs of accommodation. Similarly, the appeal has no suspensive effect if the expulsion is necessary to protect public security or the security of the Republic of Hungary. If the alien was convicted for a criminal offence and detained in a penal institution, if he is in alien regulatory custody, or for public order and security reasons, the expulsion can be implemented by escort.³⁴⁷ This is against the principle of effective remedy mentioned in the ECHR, as the abolishment of the suspensive effect of appeal does not ensure the possibility of a remedy in practice.

Foreigners are sent back to the country from which they came to Hungary, as this is the cheapest solution. When this cannot be applied, i.e. in case of people who entered or claim to have entered the country from Yugoslavia, or their return to a neighbour country seems to be dangerous for humanitarian reasons, an air flight is arranged. However, return by air is a very rare solution, as in 1998, out of 4,476 expelled persons from countries without a

³⁴⁶ In addition, 22 persons provided false data, 33 endangered the order of economy and 6 endangered public health. Source: National Police Chief Headquarters.

³⁴⁷ Art. 46. (1) Ibid.

common border with Hungary, only 475 left the country by air, and in 1999, the same figures were 1,180 out of 4,326.³⁴⁸

Those persons expelled from the country may not return for 1-10 years, which is marked in their passports and stored in the computer system of the border guards.³⁴⁹ The length of the entry and residence ban is up to the alien police department in charge of the foreigner. In addition, if the foreigner commits a crime, the court may order, as part of the punishment, an even longer entry and residence ban, up to a full life term. After the 1-10 years entry and residence ban, those expelled persons who stayed at a Border Guards Community Centre may return only if they have reimbursed all costs related to their accommodation there and travel costs in case of return by air.³⁵⁰

Expulsion does not mean that the person actually leaves the country. The provision of a false identity by the migrant and the resulting refusal of the foreign representation of a foreign representation can also result in a continued stay in the country. Foreign representations can refuse co-operation or simply ignore the provision of missing travel documents even for persons with the right identity papers. For these reasons, no more than 60% of expelled migrants left the country in 1998.³⁵¹ After the full stabilisation of Yugoslavia, when Kosovars and Serbs could and many even wished return, this ratio reached 90%.

³⁴⁸ Source: Alien Police Department of the Immigration and Citizenship Office

³⁴⁹ Law 1993:86 Art. 33. and 34.

³⁵⁰ Law 1993:86 Art. 23 (d).

³⁵¹ Estimate by József Dúzs, head of the Alien Police department of the National Border Guards

IV.B.8.b. Non-refoulement

In compliance with international human rights law, foreigners are not returned or expelled to countries where they would be exposed to the danger of persecution for reasons of race, religion, national, social affiliation or political views, or where it is greatly feared that they would be exposed to torture, inhuman or degrading treatment.³⁵² Since 1 September 1999, the expulsion order cannot be issued without requesting an expert opinion from the Office of Refugee and Migration Affairs.³⁵³ In general, the actual danger of sending a foreigner to a safe third country or safe country of origin where his further expulsion would lead to inhuman or degrading treatment is not controlled by ORMA in all details. There is little information on what happens actually with those who have to leave the country, and the risk of a chain of re-admissions cannot be excluded. The importance of the evaluation of the possibility of risk is proven also by the statement of the European Court of Human Rights in the *Vilvarajah v. UK*. case: "The [Convention organs'] examination of the existence of a risk of ill-treatment in breach of Article 3. ... must be a rigorous one in view of the absolute character of this provision..."³⁵⁴

There is no control on whether the refoulement may finally lead to inhuman, degrading treatment or punishment. This contradicts the *European Convention for the Protection of Human Rights and Fundamental Freedoms*³⁵⁵ which states: "[n]o one shall be subjected to

³⁵² Art. 32. (1). Law 1993:86 as amended by Law 1999:75

³⁵³ Art. 32 (1) Ibid.

³⁵⁴ Eur. Court. H.R. *Vilvarajah and Others* judgement of 30 October 19991 Series A. no. 215 p. 36. para. 108.

³⁵⁵ Signed in Rome on 4 November

torture or to inhuman or degrading treatment or punishment.”³⁵⁶ By not controlling fully the consequences of expelling a foreigner, these authorities are involved in the breaching of this article of the ECHR. The Commission is explicit in stating in *Chalal Family v. U.K.* that not even requirements of national security can entitle the State to expel a person, as “the guarantees of Article 3 of the Convention are of an absolute character, permitting no exception.”³⁵⁷

Before 1 September 1999, ORMA had been approached only in exceptionally serious cases. Even this obligation was frequently ignored, and there were Border Guards Directorates that never requested an expert opinion.³⁵⁸ Some Directorates requested expert opinions only if the person to be returned sharply expressed his/her fear from being persecuted.

Since January 1999, the expert opinion of the Office of Refugee and Migration Affairs is included in all negative decisions, and it indicates whether the given person can be returned to her/his country of origin or to a safe third country. In case of other migrants, the authority in charge of the alien police procedure has to request the expert opinion. There is limited influence of the rulings of the ECHR declaring for example that when expulsion leads to an exposure to severe risk to health does fall within the scope of Article 3. (*Nasri v. France*³⁵⁹), or that even persecution by non-state agents if authorities do not provide

³⁵⁶ Article 3.

³⁵⁷ Application No. 22414/93 Report of the Commission, adopted on 27 June 1995 para 102.

³⁵⁸ A report of the Hungarian Helsinki Committee found for example that the Border Guards Directorates in the Eastern region of the country had never requested an expert opinion before expulsion. Hungarian Helsinki Committee, 1998. p.2.

³⁵⁹ ruling of 13.07.95

protection in the country of origin (e.g. *H.L.R. v France*³⁶⁰ or *T.I. v. U.K.*³⁶¹) may be equally covered by Article 3.

When the expert opinion prohibits the refoulement, - only in a small percentage of all rejection cases,³⁶² - the expulsion is not executed, and the authority in charge continues to supervise the stay of the foreigner. When this authority decides that the factors that prohibited return ceased to exist, the expulsion is implemented. Recent political events radically changed the low protection profile of the non-refoulement principle. The Ministry of Interior ordered alien police authorities not to return Kosovars after November 1998 and Serbians after 24 March 1999.

IV.B.8.c. Acquisition of travel documents

The Border Guards and the Police are obliged to direct the alien police procedure. If this procedure results in an expulsion order, the authority in charge is responsible for the acquisition of travel documents - a passport or a one way 'laissez passer' -needed for the return. The authority in charge contacts the foreign representation of the country in Budapest. If there is no foreign representation in Hungary, the Ministry of Interior intervenes, and acquires the travel documents from abroad.³⁶³ There are no problems with the acquisition of the travel documents in the case of European countries except for Yugoslavia.

³⁶⁰ Application number 24573/94

³⁶¹ "Article 3 may extend to situations where the danger emanates from persons or groups of persons who are not public officials" Application number 43844/1998

³⁶² no specific data available

³⁶³ Travel documents for those migrants under Police control who stay at a Border Guards Community Shelter are also arranged for by the Border Guards.

The lack of co-operation on the side of embassies and consulates can be a major problem. The Border Guards took measures to obtain 1,561 and 1,598 travel documents in 1996 and 1997 respectively, but had success in no more than 302 and 198 times. The Yugoslav Embassy has provided no more than 6 travel documents during 1998, when 7,129 persons were ordered to leave. Some Asian and African countries, such as Afghanistan, Sri Lanka, Iraq, Sierra Leone or Liberia, do not have an operating public administration due to civil war, or the citizens are simply not registered, or the state does not wish to readmit members of a certain minority.

Abrupt changes may characterise the conditions of the acquisition of travel documents. For example, a large group of Bangladeshi citizens gathered in Hungary were sent back home in early 1999, after the long waited intervention of a representation of Bangladesh from abroad. The statement of a false identity may also hinder the acquisition of travel documents for a migrant. The situation changed after the Yugoslav war. In 1999, the expulsion of only 3,046 foreigners out of the 11,912 expelled by the Border Guards was suspended in order to acquire the documents necessary for the return.

IV.B.8.d. Return by force

On grounds of public safety, the majority of returns are executed by force. For this reason in 1998 16,640 persons (73%) were to be returned by force out of a total of 22,553 expulsions, and 12,862 (68%) out of the 18,898 expelled in 1999.³⁶⁴ During forced return, the Border Guards provide escort from Community Shelters to the border or to the Budapest Airport. Buses and vans of the Border Guards that collect people from the different Community Shelters facilitate the return. The Police escort returnees travelling by

³⁶⁴ Source: National Police Headquarters.

air. There are rare signs that return is supported by the use of force or by tranquillisers given to the returnees.³⁶⁵ The Police are in charge of the escort of those in alien police custody, while in case of return from the detention centre the authority in charge provides the escort.

IV.B.8.e. State facilitated voluntary return

Independent (not the state facilitated) voluntary return after expulsion is mostly offered to people from neighbouring countries who simply overstayed their visa, and when there is no danger that they would disobey the expulsion order. In these cases, it is also checked to see whether these people have the adequate financial means to buy ticket for their return travel.

The only organisation contributing to the subsidised voluntary return of illegal migrants and rejected asylum seekers is the International Organisation for Migration (IOM), on the basis of an agreement between the IOM and the Ministry of Interior signed in February 1997.³⁶⁶ The thorough survey of this still limited activity is crucial, as this is the first step towards a widespread practice in the European Union, namely the state subsidised return and voluntary repatriation of migrants.

IOM advertises its return programme at Community Shelters and Reception Centres and with refugee assisting NGOs. IOM supports those who explicitly wish to participate in the return scheme to return home. IOM contributes to the acquisition of travel documents in co-operation with the Border Guards, and in cases of larger groups a representative of IOM personally accompanies the returnees. On the grounds of special considerations, returnees

³⁶⁵ Verbal statements of clients of human rights organisations

³⁶⁶ IOM has adopted return programs of the IOM in the Netherlands, Belgium and Germany.

may receive some money to facilitate domestic transportation or the first steps of reintegration.³⁶⁷

The programme started in 1997, when 47 returns were assisted, by 1998 this number reached 281, and during the first six months of 1999, already 270 migrants volunteered to return. It is interesting to note the nationalities of these people: 58 migrants from Macedonia, 56 from Bulgaria, 26 from Bosnia-Herzegovina, 22 from India, 22 from Turkey, and 14 from Egypt chose this solution in 1998. The IOM program covers 60% of returns by air, and 281 persons out of 475 returned by air in 1998. The rest were escorted expulsions. In 1999, out of all the 1180 returns by air, 952 were performed by IOM.³⁶⁸ As there are several returnees who have to be escorted for public security reasons, or for having been held in a penal institution, this portion may increase just slightly.

There are advantages to the voluntary return programme for all parties involved. First of all, nothing about the fact of expulsion is marked in the passport of these migrants. Although the relevant data is still stored in the Border Guards computer system their passport will stay clean, which enables them to travel easier to other countries later on. In addition, an escorted return may draw the attention of the authorities of the country of origin on return. The IOM programme is highly beneficial for the Ministry of Interior covering the costs of such return. Since there is no need to pay the return flight of one or two policeman, the cost of return drops to some 25%. On these grounds, there is a high Ministerial-level support for the IOM return program.³⁶⁹

³⁶⁷ Information provided by Bela Solti, Operations Project Coordinator of IOM in Budapest.

³⁶⁸ Source: IOM Budapest Office

³⁶⁹ Statement by Dr. Zoltán Egyed, official of the Alien Police and Refugee Department of the Ministry of Interior.

IV.B.8.f. Readmission agreements

The return of those applicants who enter Hungary after transiting a safe third country is largely facilitated by readmission agreements. The requirement of the European Union to protect its territories from illegal migrants has led to the signing of readmission agreements with EU states. Since 1998, these agreements have been concluded on the basis of EU standards.³⁷⁰ The most important readmission agreement, namely the one concluded with Austria in 1995, was also re-structured according to these standards in 1998. The protection of the European Union from illegal migrants automatically brought up the necessity of signing similar agreements with countries where these migrants are coming from.

Hungary has signed readmission agreements with 13 European countries, is engaged in negotiation with 5 other countries, while East European countries are regularly contacted on the highest diplomatic levels to launch these talks.³⁷¹ These EU standards obliged Hungary to readmit even those persons whose entry to Hungary was already illegal, in addition to those who left Hungary after a legal stay. These agreements ensure the fast return of those apprehended within 72 hours after entry without any formalities, but return is possible later on within 90 days after the alleged date of illegal entry. So far, only 6 of

³⁷⁰ Council of the European Union, 1994.

³⁷¹ Readmission agreements have been signed with: Austria, Germany, Switzerland, Italy, Croatia, Slovenia, the Czech Republic Poland and Slovakia - countries where migrants head to; as well as with Ukraine, Romania, Bosnia and Bulgaria, where migrants usually come from. Presently there are negotiations with the Benelux countries, Greece, and Portugal, the former CIS countries, Macedonia, Albania, Yugoslavia, Pakistan, Russia. Information from Dr. Zoltán Egyed, official of the Alien Police and Refugee Department of the Ministry of Interior.

these agreements have reached operational phase, according to the available information from 1998 and 1999.

TABLE IV. 6. PERSONS READMITTED BACK FROM AND TO NEIGHBORING COUNTRIES UNDER READMISSION AGREEMENTS IN 1998, BY COUNTRY

	Readmitted back from neighbouring country under readmission agreement			Returned to neighbouring country under readmission agreement		
Country	Total	Citizen of Hungary	3 rd country national	Total	Citizen of the partner country	3 rd country national
Austria	3,764	72	3,692	28	14	14
Slovenia	1,163		1,163	4	3	1
Croatia	27		27	6	31	37
Romania	1		1	784	769	15
Ukraine	4	2	2	566	27	539
Slovakia	602	585	17	33	14	19
Total	5,561	587	4,902	1,452	831	621

Source: Alien Police Department of the National Border Guards Headquarters

TABLE IV.7. PERSONS READMITTED BACK FROM AND TO NEIGHBOURING COUNTRIES UNDER READMISSION AGREEMENTS IN 1999, BY COUNTRY

	Readmitted back from neighbouring country under readmission agreement			Returned to neighbouring country under readmission agreement		
Country	Total	Citizen of Hungary	3 rd country national	Total	Citizen of the partner country	3 rd country national
Austria	3,261	104	3,157	13	2	11
Slovenia	926		926	4	1	3
Croatia	57		57	5	1	3
Romania				1,546	1,539	7
Ukraine				734	67	667
Slovakia	112	10	102	25	8	17
Total	4,356	114	4,242	2,316	1,607	709

Source: Alien Police Department of the National Border Guards Headquarters

Both periods well show the directions of migration flow, into and out from the country: Hungary returned the bulk of migrants to Romania and Ukraine, while most of those returned to Hungary arrived from Austria. In addition to the geographic position of the main migration routes, these figures also reveal the high differences in the efficiency of migration control on the different border zones. E.g. the 45 'Schengen buses' equipped

with infra-red detectors,³⁷² as well as the helicopters and other infrastructure of the Austrian border police, which are presently not available in the former Communist states, highly increase the number of apprehended illegal migrants, and thus also the number of those returned from Austria to Hungary.

IV.C. Conclusion

This chapter has presented the major characteristics of the asylum regime of Hungary, by describing its characteristics before and after 1998, the year when the new Law on Asylum entered into force. Since that year, due to the strengthened border control leading to the West, a far higher ratio of foreigners wishing to move to the West have been 'trapped' in Hungary, and thus forced to apply for asylum, as the only means of avoiding or at least postponing forced return home or to a third country.

Copying most of the anti-migration policies of the European Union described in Chapter III. – *Accession to the European Union*, Hungary implemented several measures to prohibit the entry and the further travel of illegal migrants. Stricter visa requirements, carriers' sanctions and a fight against illegal border crossing radically curtailed the possibility of potential asylum seekers to request protection in Hungary. Furthermore, with the inclusion of the safe third country principle in the Law on Asylum, even genuine asylum seekers had to face the possibility of being returned to other countries. The return of illegal migrants, including potential asylum seekers and rejected asylum seekers, has been facilitated by readmission agreements and their further travel has been impeded by their accommodation at closed Community Shelters of the Border Guards.

³⁷² Source: Nemzetközi Katonai Sajtószemle (International Military Review) APA 5 Nov. 1999.

The operation of this 'anti-migration' machinery leads to the infringement of the principles of international human right agreements. In general it prohibits genuine asylum seekers to find protection according to their right to asylum provided by the Universal Declaration of Human Rights. Secondly, other rights included in binding international instruments are also infringed, as was explained in detail by this chapter, especially the prohibition of inhuman and degrading treatment is infringed by the conditions at the Shelters where some asylum seekers are held.

The Hungarian asylum system has integrated into the European Union's anti-migration regime, resulting in the prohibition of tens of thousands of potential asylum seekers every year to transit Hungary and enter the European Union in search of protection. These measures basically make illegal migrants, both potential Geneva Convention refugees and economic migrants, to apply for asylum in Hungary where they would not like to stay for long, which makes Hungary a 'country of unintended asylum'.

V. PROPOSALS

Present chapter analyses first the country's decision-making capabilities during the accession period, and then the future attractiveness of Hungary for asylum seekers. On these grounds, policy makers as well as administrative bodies and NGOs will be addressed with ideas for the optimal progress in national asylum affairs. The main objective of these proposals is to account for the main elements of the analysis already prepared by famous experts in the field, as well as to present the ideas of the author of this thesis for a more efficient operation of the Hungarian system of asylum affairs and for the better observation of the principles of international human rights and refugee related legal instruments. The proposals intend to be realistic, and take into consideration the limited decision-making capacity Hungary has in special regard to her accession to the European Union, as it has been demonstrated in the previous Chapters III. *Accession to the European Union* and IV. *– The institution of asylum in Hungary.*

*V.A. Decision-making at the national level*³⁷³

Present Hungarian state policies concerning asylum seekers are primarily influenced by the country's geopolitical situation in anticipation of its accession to the European Union. In fact, the strong relationship between the EU accession on the one hand and the EU pressure to severely tighten the anti-migration regime on the other hand, leaves limited room for genuine national level decision-making. Countries of the CEE region, including Hungary, "have not participated in formulating the policies which now effect them and which they are now compelled if they wish to join the European Union."³⁷⁴

³⁷³ Several statements in this chapter are based on the following book: Lavenex, 1999.

³⁷⁴ Lavenex, 1999, p. 155.

This trend is unlikely to change in the future, as this form of accession has no real alternative given the uneven distribution of political and economic power in Europe. In addition, Ministries - due to various pre-accession obligations - are eager to introduce EU standards long before full membership, with limited capacity or by proposing strategic alternatives. The process, unfortunately, involves only insignificant contribution from civil society or even from the Parliament, and mostly the government decides (or does not decide) on the issues of the accession.³⁷⁵ Therefore, not even the remaining manoeuvring room is fully used for national interests. The accession is mostly characterised by the implementation of special regulations and standards on ministerial levels, while functional and complex issues (such as the human resources management of migration) are not controlled. A brief introduction to a concrete proposal package composed by a scientist at the end of present chapter will provide examples where no national level policy has been created.

There is little analysis on what strategies Hungary employs during the accession talks either, e.g. how it 'sells' its role as a shield of the EU against illegal migrants. With the elaboration of proper lobbying methods that consider what Hungary can offer the EU in relation to migration management, the country's positions would significantly improve.

³⁷⁵ Statement by Judith Tóth, university professor, and representative of the Menedék Association in an interview made by the author in November 1999.

Refugees and economic migrants become tend to seek asylum where they may consequently expect either the legalisation of their stay and social benefits from a wealthy state, or other advantages such as the (temporary) suspension of their return. (See Chapter I.A.5. – *The relation between migration and the quest for asylum.*) During the coming years, at least until the accession to the European Union, Hungary will continue to be an intended transit country on the routes leading to Western Europe. The difficulties for migrants in Hungary to find employment, accommodation, health care services, etc. constitute and will continue to constitute pressure on migrants, except for some ethnic Hungarians from the neighbour countries, to move on to other countries offering better prospects,³⁷⁷ as it has been also discussed in Chapter I.B.3. – *The reasons behind applications today.*

V.B.1. The magnetic force of the geographical location

Due to controls on the Schengen border with Austria, Hungary will remain, if not become even more a “reservoir for all unsuccessful asylum seekers and other migrants who try to settle in the affluent West, but fail.”³⁷⁸ Therefore, authorities will try to return all illegal migrants to third countries or to their countries of origin as fast as possible. Consequently,

³⁷⁶ Parts of this subchapter are based on discussions with Judit Juhász, migration specialist of the Central Statistical Institute, Budapest.

³⁷⁷ The experiences of human rights organisation the author has connections to prove the validity of this statement.

³⁷⁸ Boldizsár Nagy, 1995. p. 197-198.

a great number of illegal migrants will request asylum, whose continued stay in the country may be assured only by this action. Alternatively, the present number of requests for asylum will not grow significantly due to a balance between the stricter application of readmission agreements, the strict application of the 'safe third country' principle in EU countries and the stronger border control at the Eastern borders.

The implementation of visa requirements (See Chapter IV.A.4.a. – *Visa requirements*) in respect of nationals of Ukraine, Romania and Yugoslavia may diminish the number of asylum seekers. This will be inevitable with the growing harmonisation of national and EU visa requirements. However, in the case of another crisis in the Balkans or in the territory of the former Soviet Union, the number of asylum seekers may grow, mostly after a large number of illegal entries to the country.

V.B.2. The magnetic force of economic growth

Hungary is slowly becoming a stabile, growing economy fuelled by strong foreign investments, a rather stabile (4-6%) GDP growth rate, and an efficiency-oriented transformation of society. On these grounds, economic migrants will continue to come, mainly those who can find jobs easier in the labour market, such as intellectuals and skilled workers. If this migration may be done within a legal, regular framework, few will apply for asylum. However, for the less wealthy, and for those who cannot launch a business in Hungary, the only hope to settle here will be the application for refugee status.

V.B.3. The magnetic force of the nationality

When analysing the future trends in the number of asylum seekers in Hungary, the link between migration and ethnicity or nationality in the CEE region must also be

emphasised.³⁷⁹ Two and a half million Germans have resettled from Eastern Europe and the former Soviet Union to Germany since 1987, Jews from the territories of the former Soviet Union have moved to Israel, and hundreds of thousands of Russians from the former Soviet Union Member States have decided to move to Russia.

This process of national and ethnic ‘un-mixing’ appeared in the Carpathian basin also, as the respectively 1.6 million, 600,000, 330,000 and 170,000 strong ethnic-Hungarian communities in Romania, Slovakia, Yugoslavia and Ukraine have significantly contributed to the number of those migrants and asylum seekers who settled in the country. This trend has stopped in the last years but may appear again if ethnic tensions escalate in these countries.

V.B.4. After EU accession

With a full membership in the European Union, due to the Dublin Convention, Hungary will be responsible for the determination of the asylum claims of those who enter the EU zone. A study by the European Council of Refugees and Exiles confirms that “the geographical location of States in relation to asylum seekers’ travel routes is significant.”³⁸⁰ Hungary will have an extremely long 1,786-kilometre non-EU border zone, 79,6% of national borders, which includes all the borders except for the one with Austria and possibly with Slovenia. Thus, the country may easily become the main recipient of those coming from the Balkans or from Ukraine. This may lead to a large increase in the number of asylum claims.

³⁷⁹ Brubaker, 1998.

³⁸⁰ ECRE, 1999, Art. 15.

This is despite the fact that even after joining the European Union, Hungary will not immediately become a country where asylum seekers wish to launch their claims. Hungary will be responsible for determining the applications of asylum seekers who enter the EU territory in Hungary but who wish to move on and settle elsewhere. At the same time, Article 9. of the Dublin Convention allows that “any Member State, even when it is not responsible under the criteria laid out in this Convention, may, for humanitarian reasons, based in particular on family or cultural grounds, examine an application for asylum at the request of another Member State, provided that the application so desires.” Given the burden sharing objectives present EU countries follow, this option may have only a reduced impact on the number of cases processed in Hungary.

This situation may be modified by the abolishment of control at the border checkpoints with Austria and later on with Slovenia. (Not all protection will be abolished on these border zones; border policing and active alien policing in the wide border zone will still be performed.) With the elimination of the inspection of transport at these borders, travel as well as human smuggling towards the West will be easier than it is now.

V.C. Principles for asylum policy makers

The previous parts of this Chapter revised those factors that influence the decision making capacity of the country, and then estimated the future attractiveness of Hungary for asylum seekers, i.e. how the relevant trends demonstrated by statistical data provided in Chapter I.B.2. – *Asylum seekers and refugees today*, will continue in the future. This sub-chapter, on these grounds presents advice to policy makers in Hungary, how to advance asylum and migration related affairs, taking into consideration the principles of international human rights instruments.

The reconciliation of interests to ease migration pressures and the international obligations to protect refugees is the underlying policy debate over the formation of the institution of asylum in each host country. It is “however, basically nothing but a modern feature of the classical dichotomy between states’ claim to sovereignty and their *bona fide* participation in international co-operation. This dichotomy is particularly remarkable within the field of human rights protection; here, asylum procedures are the key mechanism in order to maintain human rights norms and principles vis-à-vis states’ legitimate concern to control their borders.”³⁸¹ A special balance is therefore created by policy makers at a national and regional level where these principles, not always consciously, create a network of measures for self-protection and another network for those in need of international protection.

V.C.1. The reasons for limiting protection

States implement a variety of measures to limit the number of those foreigners in the country who, due to their lack of training or professional experience, or due to the scarcity of financial means or difficulties in social integration, are regarded as burdens on the state budget or a limitation to a more efficient operation of society. These viewpoints live side by side with the pro-asylum considerations, which do not consider the economic value of foreigners looking for protection, but their invaluable human value.

The arrival of the unwanted migrants (as opposed to highly skilled, professional migrants) requires states to implement integration policies, provide free education and health care services, etc. if they wish to avoid the creation of social ghettos and potential centres of the eruption of social tensions. Public opinion, the media, and the international community adds extra pressure to the decisions of policy makers by interpreting refugees’ access to the

³⁸¹ Vedsted-Hansen, 1998, p.2.

welfare system as abusive (or, on the opposite; as well-deserved). Indeed, “[p]rotection of national markets for labour and housing has been a main rationale behind setting up immigration controls in modern time. It is generally recognised that these interests may justify restrictions of certain human rights, the protection of which might otherwise mean an implied right of residence.”³⁸²

When discussing the asylum potential of a country, i.e. how many and what sort of foreigners it may welcome, a few aspects must be definitely considered. The limitation on the numbers of immigrants, whether asylum seekers or not, may aim at the establishment of public order or the prevention of crime. In some countries, such as in Macedonia during the Kosovo crisis, as well as in African states neighbouring Sierra Leone, Liberia, or Rwanda, the arrival of a large number of refugees did threaten public order, as the presence of a large number of uprooted people without adequate shelter and food did lead to criminal events. In the Macedonian case, even UNHCR confirmed the instability that the presence of a mass exodus of refugees brought to the country.³⁸³

More stabile, larger states do not face these destabilising effects at such intensity, but the lack of state or non-governmental integration measures may push asylum seekers towards illegal work or other illegal activity as the only solutions for acquiring resources for everyday living, thus the reception of asylum seekers requires a well planned national co-ordination, and in the case of developing countries, the active support of the international community.

³⁸² Vedsted-Hansen, 1998, p. 5-6.

³⁸³ Statement by Lorenzo Pasquali, Deputy Representative of UNHCR in Budapest, 28/04/1999.

humanitarian and state security issues are also involved. Harmonisation enables policies of different Ministries and other authorities to back rather than disable one another. On these grounds, the definition of the general objectives of the asylum policy, as well as the further modification and/or creation of the relevant legal and institutional system could be realised.

It is advisable that the Hungarian government promotes research on potential large-scale mass movements that may reach the country, finds a role for the country in the process of protecting these people, and puts pressure on EU countries to intervene in these situations.

Then, after adequate identification of the root causes of potential migratory moves, co-operations is to be developed involving national, EU level, as well as Central European bodies where through economic aid and development programmes, stability can be maintained in the migrant sending countries. The amount of EU support in case of a larger influx of refugees, such as another conflict in the Balkans, is also to be clarified.

V.C.4. International co-operation to decrease push factors

A wider asylum policy is required to tackle the very roots of the push factors presented in Chapter I.1. – *Migration and asylum in the World*. International aid programmes for the immediate stabilisation of economically and/or politically destabilised countries, war-torn regions, or programmes for the long term social and educational development of these countries are the most visible signs of the will of the international community to decrease push factors. Hungary must take part in these activities, with special regards to those areas where asylum seekers would come from. The prevention of the violent outbreak of political tensions may be also avoided by well-planned diplomatic measures, combined with other forms of aid. This was proven by the example of Albania where the danger of a mass exodus was prevented in 1997 by a well focused package of measures.

V.C.2. The reality of migration for asylum

The phenomenon of international migration for protection is a natural, inherent part of history. Until the hypothetical situation when countries would completely seal their borders, people will go where prospects for a meaningful life are more open. The complete elimination of all factors that forces people to leave their countries is an illusory objective that constantly needs to be aimed at, knowing the impossibility of its achievement.

A full ban on migration would lead to controversial results, such as the fuelling of political tensions in the refugee sending countries, which could be solved by the temporary/permanent settlement of people elsewhere. The institution of asylum is a form of protection that can ease the unfolding of political, ethnic, and religious tensions, and the loss of human lives. Thus, an institution has to be maintained, which enables potential Geneva Convention refugees to be protected from further harm, while preventing the escalation of conflicts reaching a final stage of mass exodus.

V.C.3. National asylum policy in the migration context

First of all, Hungary needs a comprehensive policy for migration. A most valuable move would be, if „[o]n the proposition of the government, the Parliament discusses and accepts a document (National Migration Programme), which summarises the principles of migration policy, its legal, financial, public administration and social tools, including the decision making system that controls and rectifies their realisation.”³⁸⁴ Migration and asylum policies have been dominated by a focus on security, social and foreign affairs issues so far. This needs to develop into a harmonised system where economic development, cultural and public education, social integration, health care, human rights,

³⁸⁴ Sik and Tóth, eds., 1999, p. 11.

It is advisable that Hungarian government also makes efforts to warn the international political community about a special area of international trade, about "the direct links between the sales of arms to regimes violating minority and human rights, and consequent moral responsibilities towards individuals and groups who have sought international protection as a result of having been attacked, injured or tortured with such weapons."³⁸⁵ More explicitly, the special link between the export of weapons and the consequent influx of refugees is to be emphasised.

V.C.5. Development of the national asylum system

The continuous presence of asylum seekers, refugees and other migrants in Hungarian society is inevitable. Despite this fact, there is no national migration and asylum policy, which is shown by criticisms against the government for not protecting related national interests.³⁸⁶ The meticulous implementation of the principles of the *acquis communautaire* does not lead to a national policy that would link the various migration and asylum related needs and administrative functions together.

When creating and influencing the main principles of asylum policy in Hungary, national policy makers, NGO activists, and officials need to be fully aware that a well-operating institution of asylum includes the following functions in any country:

- Good access to asylum

³⁸⁵ Minority Rights Group, 1997, p.37.

³⁸⁶ Menedék, one of the most prestigious Hungarian NGOs, prepared a study in early 1999 under the mandate of the Ministry of Interior. The study's objective is to initiate the creation of a state policy on migration. The study, in addition to concrete recommendations, points out the lack of national level co-ordination in the field. Sik and Tóth. Eds., 1999.

- Fair and fast procedure
- Strong integration system for those who are provided protection
- A conscientious system for the return of rejected claimants

The detailed description of the Hungarian system of asylum in Chapter IV. – *The institution of asylum in Hungary* has revealed how this institution operates now. Decisions of the actual governmental and administrative bodies as well as other organisation, especially NGOs will further modify the operation of these functions in Hungary, through which a higher effectiveness of operation and a more conscious and practically demonstrated respect for human rights can be attained. These suggestions, presented below, all are to be interpreted and implemented in light of the EU accession procedure. Hungary on its own does not have the asylum potential to face refugee pressures alone; harmonisation with the policies of EU states must be the core element of the regulation of asylum affairs.

V.C.6. Good access to asylum

During the last ten years, Hungary has played a significant role in providing protection for citizens fleeing from countries of the region and countries far away. (See Chapter I.B. – *Refugees in Hungary*.) In order to improve the access to asylum, standards for the admission of these foreigners need to be elaborated, especially in the case of the escalation of political tensions. These suggestions will be based on principles of international human rights instruments, thus they will avoid discrimination on the basis of nationality or ethnic origin, or in favour of ethnic-Hungarians of neighbouring countries.

The maintenance of a good access to the asylum procedure cannot stand alone without a fast determination procedure and a good system to send the rejected back as the arrival and

application of bogus refugees is an enormous burden at the public expenditure. In case the determination procedure is slow, or the rejected asylum seekers are not sent back, the country's asylum capacity is blocked. Furthermore, the maintenance of a good access to asylum basically depends on burden sharing lobbying with EU states. If these states radically decrease the access of foreigners to the asylum procedure, Hungary becomes the only country that is still accessible in the region. That may lead to a radical increase in the number of applications, and to an unmanageable wave of foreigners in the country. The country's capabilities to ensure a good access to asylum depend on the openness of West European states, thus burden sharing strategies are needed to be elaborated with those countries.

V.C.7. Fair and fast procedure

V.C.7.a. The modification of the legal system

The 1997 Law on Asylum (See IV.B.1. – *The new Law on Asylum*) needs to be further developed, taking into consideration the experiences gained since its implementation in 1 March 1998. First of all, in order to meet the above hypothetical goal, the law is to describe the procedural safeguards of asylum claims and of refugee status, as well as the exact procedural order of the determination process. The exclusion clauses in the above law are to be altered to match the 1951 Geneva Convention.

Asylum seekers may now receive refugee status, or 'person authorised to stay' status. The third, 'temporary protected person', status is provided on the basis of a governmental decision for entire groups of people, but since the entry into force of the Law on Asylum, this instrument has not been applied. The conditions of the provision of this status need to be specified by law, under which the government would be obliged to provide this protection. Conditions that could be considered would be the seriousness of political crises

in the refugee sending country, time limits to open this form of protection, bodies concerned in intervening in the subject, etc. Otherwise the government could not be held responsible for denying or ignoring the provision of this status.

V.C.7.b. Reform of the administration

There is a need to develop the practical administration of refugee issues as well. Presently, the Refugee Affairs Directorate of the Immigration and Citizenship Office meets deadlines, but the very limited time an officer has for one applicant raises concerns about the quality of the decision, as described in Chapter IV.B.2.a. – *Immigration ad Citizenship Office*.³⁸⁷

Moreover, the continent and country specific training of the staff must be continued; officers should be well-versed on the political and social life, with the potential reasons of persecution in the asylum seeker sending countries within their specialisation. This effort could be facilitated by a Hungarian language Internet database. Otherwise, without a detailed knowledge on country specific up-to-date information, the quality of the asylum determination process will stay below the expectations of the legal instruments. The appeal process at the first appeal court, and possibly at the Supreme Court, extends the application period up to 6-8 months, which is partly too long, and negatively affects unprepared judges at these courts. A special court should be established, or judges should be specialised on these matters, in order to reach faster and professional decisions.

Long-term plans should be made for the operation of the administration in case of any escalating growth in the number of asylum seekers, and in case of a new conflict in one of the neighbouring countries. The capacities of the Refugee Affairs Directorate of the Immigration and Citizenship Office, the successor of the Office of Refugee and Migration

³⁸⁷ The length of determination procedures in some EU countries (e.g. 3 years in the Netherlands and up to 10 years in Germany) are negative examples to be avoided.

Affairs, should be set so that no increase in the number of asylum seekers could lead to slower and/or less precisely based decisions.

The conditions at the Border Guards Community Shelters, and at Reception Centres presented in Chapter IV.B.7.a. and b. also characterise the quality of the asylum procedure. A proper 'refugee friendly' training of the staff at these institutions, the creation of more humane accommodation and a sanitary environment is also of basic importance. Present efforts aiming at these objectives should be continued on the long run.

V.C.8. Good integration system for those who are provided protection

Migration pressures cannot be stopped at the borders, but partly through a well-planned integration of immigrants and already recognised refugees in host countries. This is an essential tool to decrease migratory pressures, since settled and integrated refugees can support their countries of origin through financial and intellectual means. Consequently, it is advisable that the government investigates the optimal ways to integrate recognised refugees into the Hungarian society, considering the experiences of integration models already existing in Europe (See Chapter III.C.7. *Effective asylum: social services and integration*)

The usual life-cycle of the integration of a migrant, which expresses the transition from a purely consuming person into somebody who produces wealth in the society, may be radically altered by these conscious integration programmes. Refugees integrate to societies along already existing social integration patterns. Lack of effective programmes will lead to the danger of their integration along the most accessible shadow economy, and/or to their inhuman employment.

Integration should not mean assimilation, but sensitivity to the values that a minority may contribute to the development of the social life in the country. A very effective tool is the emergence of strong communities by refugees and their families, which supports self-defence and self-representation, communication with the majority society and participation in the construction of democracy. The legal declaration of integration, i.e. an accessible and transparent naturalisation procedure, is also a fundamental element of integration.

The quality of the institution of asylum is greatly linked to the level of social services that a country provides to foreigners. Refugees should not receive significantly better services than nationals. For example, the provision of free housing to recognised refugees could lead to severe social tension as nationals have recently no access to such state support at all. At the same time, it must be recognised that refugees' and asylum seekers' lack of social ties and financial means may be more threatened with a faster evaporation of the basics of their existence than in the case of most other social groups. On these grounds, they need an equal, or just slightly preferential, special attention. The integration, or at least temporary integration, of those with the 'person authorised to stay status' should be equally solved. There is a special need to regulate the conditions of access to work and to social integration for those who stay in Hungary with the repeated extension of this status.

V.C.9. A good system for the return of rejected claimants

V.C.9.a. The refoulement policy and database

Rejected asylum seekers need to leave the country if their return is not contrary to the Council of Europe and the UN standards, including international human rights law against refoulement. Presently, the alien police departments of the Border Guards and the Police are obliged to request the evaluation of such risk from the Refugees Directorate, as discussed in detail in Chapter IV.B.8. – *The observation of the principle of non-*

refoulement. To decide efficiently about the risks that asylum seekers face in their countries of origin, a strong link should be established, possibly through the Internet, with international databases, and through the creation of a constantly updated Hungarian-version sub-system. The Police and the Border Guards is to be obliged to consult this database, possibly run under the auspices of the new Immigration and Citizenship Office.

V.C.9.b. International management of returns

International co-operation is required to send illegal migrants directly home instead of the application of readmission agreements in a row. For example, comparing the 1998 figure of all returns by air (475) to that of all expelled Asians (2154) and Africans (643) reveals that not even Hungary takes the burden to return illegal migrants home directly. Instead of a chain of readmission measures, a less expensive direct flight home - within the framework of regional co-operation – is required to be effectuated from the final country the foreigner reached.

V.C.9.c. The promotion of voluntary return

State assisted voluntary return, run by the International Organisation of Migration (IOM), has proved to be a humane and cost-effective solution, as returnees are not escorted by the Police, and the expulsion is not registered in their passports. (See Chapter IV.A.8.e. - State facilitated voluntary return.) This programme is more and more successful, as IOM supervises today the majority of returns by air - 281 out of 475 in 1998, and 952 out of 1,180 in 1999.³⁸⁸ However, the voluntary return programmes are applied exclusively for returns by air, and constitute only a minor fragment of all returns. The possibilities of facilitating voluntary return by land should be also researched.

³⁸⁸ Source: National Police Headquarters

V.D. Specific proposals for the NGO sector

The previous sub-Chapter V.2. – *Principles for asylum policy makers* discussed in general terms what all those actors that contribute to the formation of a national migration policy should take into consideration. Present sub-chapter provides specific proposals for the NGO sector already introduced in Chapter IV.B.2.c. - *Refugee assisting NGOs*.

V.D.1. Required activities

Hungarian NGOs should be aware of the consequences of the future increase in the number of migrants who arrive to the country. “For the foreseeable future, it is likely that, as a result of membership of the EU, an increasing proportion of the refugees who flee to Europe will seek asylum in... Central European countries. This will inevitably place an ever-increasing strain on refugee assisting NGOs, who are barely resourced to cope with their present caseloads.”³⁸⁹ Therefore, NGOs must prepare for the service of a previously unimaginable number of migrants who seek their help. This may be done in a form of specialisation, the division of tasks between organisations, and the enhancement of the relevant organisational capacities.

NGOs also need to lobby before government agencies for the better observance of the principles of asylum, for the provision of a fair and just procedure, and reasonable living conditions for asylum seekers. NGOs should also lobby for the adequate state support of integration programmes and for acceptable living conditions of recognised refugees. NGOs also should continuously monitor the administrative bodies that deal with asylum seekers and to-be asylum seekers, so that the individual cases will be examined fairly in the framework of due process, and with the opportunity of appeal. These activities may

³⁸⁹ ECRE, 1999b, p. 12.

become a point of reference for both government and administrative cadres, if they are performed in a professional, co-operative manner, and in a more peaceful way than today.

NGOs, as their inherent lobbying character enables them, need to draw the attention of the public to the positive dimensions of migration. They need to advertise the values that asylum seekers bring with them, and to the advantages of a multicultural society. They also need to draw the attention to the human obligation of supporting those in need, optionally referring to periods of the national history, when other countries welcomed Hungarian emigrants.

V.D.2. Enhancement of financial capacities

A survey of the European Council on Refugees and Exiles defines three major fields where refugee assisting NGOs of the Central European region are in the greatest need of more fund raising:³⁹⁰

First, they need support from external sources and from each other in developing national sources of funds - governmental and non-governmental. (Including local-level funding)

Secondly, the NGOs need assistance in following developments in constantly evolving EU and other international funding, as well as advice and help in accessing available funds.

Finally, they need to deepen relationships and share experiences with like-minded, more experienced West European and North American organisations, with a possible end purpose of applying for joint and partner funding. The possibilities of those 'richer' Western agencies acting as potential donors should also be thoroughly explored.

³⁹⁰ ECRE, 1999b, p. 12.

Similar to business organisations, those NGOs find funding that constantly make efforts to guarantee a high level, up-to-date professional capacity. Accordingly, ongoing training, the fomentation of international contacts, a presence in the European Union NGO world - made up of more than 50 different co-operation fora³⁹¹ - will be the key to survival. Authorities and governmental agencies will also become more professional, and they will accept less and less representatives of the 'heroic' past of the late 80's and early 90's. They also will be looking for well-trained NGO members to co-operate with. NGOs without the potential to develop the quality of their services in the field of legal representation should concentrate their efforts on community building through cultural programmes, training courses, etc.

V.D.3. Extension of professional capacities

The expertise of professional NGOs should be involved in several fields of establishing and running the asylum institution. There are several exemplary forms of NGO-state co-operation, especially in the law making areas. However, this co-operation is to be developed in certain fields, first of all in the direct involvement of NGOs in the determination procedure.

Today, the legal representation of asylum seekers is performed by NGOs depending on the funds they find for this activity. As international practice reveals, professional NGOs may be efficient and long-term representatives of asylum seekers if their operation costs have a stabile funding source. For example, in the United Kingdom, refugee assisting NGO even receive state subsidies to perform their activities.³⁹²

³⁹¹ Austrian presidency, 1998, Art. 32.

³⁹² Statement by Russell Blakey, solicitor for Wilson & Co. in England, on 16.05.99.

In the case of manifestly unfounded claims, amongst several options, the example of Denmark could be followed.³⁹³ There, the Immigration Service determines the manifestly unfounded claims, and if this assumption is confirmed, the decision is sent to the Danish Refugee Council. The Refugee Council interviews the person again, and if it does not agree with the decision, the case is transferred to the normal procedure. Thereby, while the efficient institution of manifestly unfounded claim determination can be maintained, the chances of erroneous determinations are significantly decreased, as an independent and professional organisation controls the operation of the state authority.

In summary, NGOs should offer and implement these concrete models in Hungary. In addition, they should overcome their weaknesses presented in the previous chapter: the lack of co-operation with one another, the establishment of parallel structures, the sometimes non-diplomatic character of dialogue followed with state authorities, and the insecurity stemming from the improperly built funding background.

V.E. A concrete proposal

The outstanding importance of the issues concerning asylum affairs well justify the items set forth by the International Migration and Refugee Affairs Research Centre of the Hungarian Academy of Sciences in May 1999. The propositions that broadly relate to all migrants, and therefore include asylum seekers and recognised refugees as well, outline a major modification of the present (partly non-existent) system.³⁹⁴

³⁹³ Example taken from: Vedsted-Hansen, 1998. p.15-16.

³⁹⁴ Parts of the full list are presented. Translation by the author of the Thesis. Sik and Tóth Eds., 1999, p. 11-12.

1. The treatment of international migration as an overall and strategic issue requires the nomination of a secretary of state in the Office of the Prime Minister responsible for migration policy, whose tasks include the preparation and representation on social and international levels of governmental decisions and legal regulations influencing several social and economic sub-systems.
2. It is desirable that the government regularly reviews the application and conditions of migration policy, and adequate corrections should be made. A continued consultation is to be maintained with national and international NGOs and institutions.
3. A migration council is to be established by the Parliament, which would be involved in the preparation of government decisions and legislation, and in the maintenance of social reflection and communication between Ministries.
4. The sectoral and functional tasks are to be distinguished in the administration of international migration. The first group of tasks includes for example labour or refugee affairs specialised administration, while the latter refers to fields covering the whole scope of governmental decision making, such as the information channelling and legal activities of foreign representations (establishment of relations between authorities, lobbying for international support, regular compilation of data on refugee and migrant sending countries, monitoring of repatriation programmes, etc.)
5. Each sectional and functional body is to have a clearly defined role in the administration of migration issues. Regulations on the roles of ministries are also required to include their specific permanent tasks related to migration.
6. Local governments are the key actors in the integration of migrants. Hundreds of legal regulations provide for the obligations of local governments toward recognised refugees, who have equal rights as any other local citizens. However, these regulations do not

create a political, administrative, institutional and professional background matching these obligations.

7. A regularly operating forum is to be established that harmonises within and between counties migration policies, to establish links between local governments of counties, cities and villages, settlement-development organisations, labour organs, public administration offices, social, health care and child protection institutions, etc.

The proposals of the International Migration and Refugee Affairs Research Centre clearly show a need for an institutionalised governmental capacity to control asylum and migration affairs. The proposals draw the attention to the necessity of well distributed coordination by several ministries as well as by all other local, national and international entities that are effected by these affairs, which would give proper management to each aspect of the complex issue.

Conclusion

Hungary, similar to other associated states of the European Union, became an integral part of one of the major East-West and South-North illegal migration routes to Western Europe from the end of the 1980's, after the gradual breaking up of the iron curtain. Since the fall of Communism and the 180 degree turn of the country's political orientation, the country has been harmonising its legal and administrative standards with West European expectations, including the 'acquis communautaire' of the European Union, with special regard to asylum and migration policies. During the accession talks, the interests of the EU have played and still play a dominant role, which, among other issues, aim at the enlargement of the 'Fortress Europe', the ever increasing protection of the Western part of the continent from undesired masses of migrants.

The harmonisation, as facilitated by EU Member States, has a “tendency ... to focus the negotiations and training programmes on the enforcement of migration controls, especially to deter ‘abusive’ claimants from entering the asylum system.”³⁹⁵ The balance between illegal migration control and the protection of refugees has evaporated for the detriment of the situation of those requiring international protection. More explicitly, the agreement of Hungary to play the role of the anti-migrant shield, “must be seen as the result of a political bargain in exchange for the prospect EU membership”.³⁹⁶ The lack of a national migration and asylum policy has strengthened the full co-operation strategy of the country. The restrictive measures, presented by this paper, copy the same practices of the EU; such as the strict border control, the implementation of the safe third country principle, the elaboration of subsidiary forms of protection, the conclusion of readmission agreements, and the detention of asylum seekers. These measures do include several factors in contradiction with the principles of international human rights agreements.

The harmonisation process has proven to be too fast, frequently lacking the institutional and infrastructural capacity needed for the implementation of the standards of both the international human rights instruments and those of the EU. The development of the legal system, the gradual amelioration of the administration of asylum affairs and the emerging human rights NGO sector resulted in a seemingly better asylum institution with better services. In reality however, the accessibility of the system decreased for illegal migrants, including potential Geneva Convention refugees, without the possibility of a legal entry to Hungary.

³⁹⁵ Position on the Enlargement of the European Union in Relation to Asylum. ECRE March 1999 www.ecre.org/eu.html Introduction and Article 3.

³⁹⁶ Lavenex, 1999, p.157.

The management of national asylum affairs in the case of a small country such as Hungary needs to take into special consideration the statement of the Preamble of the 1951 Geneva Convention: “the grant of asylum may place unduly heavy burdens on certain countries, and ... a satisfactory solution of the problem ... cannot therefore be achieved without international co-operation.” Accordingly, the country’s decision-making power to operate a more liberal asylum policy is limited these days. The elaboration of an asylum and refugee system according to the principles of international human rights agreements in close cooperation with EU bodies is to solution which ensures the respect of the rights of refugees.

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